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In the

Supreme Court of the United States

OCTOBER TERM, 1955

No. . . . .

HAROLD D. ROGERS,
Petitioner

vs.

STATE OF CONNECTICUT,
Respondent

Petition for a Writ of Certiorari to the Supreme Court of Errors of the State of Connecticut

Petitioner, Harold D. Rogers, respectfully prays that a writ of certiorari issue to review the final judgment of the Supreme Court of Errors of the State of Connecticut, affirming the judgment upon which the death sentence was imposed by the Superior Court for New Haven County.

OPINIONS BELOW

The opinion of the Supreme Court of Errors of Connecticut and the dissenting opinion of Judge O'Sullivan, printed in Appendix A hereto, infra, pp. 17-28, are reported at 143 Conn. 167. The unofficial citation is 120 A. 2d 409.

JURISDICTION

The judgment of the Supreme Court of Errors of Connecticut was entered on January 27, 1956. A copy of the opinion was released February 7, 1956.

The jurisdiction of this court is invoked under 28 U.S.C. Section 1257(3). Petitioner was deprived of rights under the Fourteenth Amendment to the Constitution of the United States of America by the decision of the Supreme Court of Errors of Connecticut affirming the judgment of conviction, and the death sentence, of the Superior Court of New Haven County.

QUESTIONS PRESENTED

1. Did the State authorities in denying petitioner's request to consult his privately-retained counsel prior to making an alleged confession of a capital crime in the State's Attorney's office deprive petitioner of his right to the effective aid of counsel guaranteed in capital cases by the due process clause of the Fourteenth Amendment?

2. Did the State authorities in holding the petitioner incommunicado in jail the following day and prior to a second alleged confession of a capital crime deprive petitioner of his constitutional right to representation by counsel?

3. Were the undisputed circumstances of two unlawful removals from the county jail, prolonged interrogation, threats to confine petitioner's family, and denial of counsel, which surrounded the exaction of the two alleged confessions, such as to make them involuntary so that judgment inflicting the death sentence deprived petitioner of due process of law in violation of the Fourteenth Amendment?

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner relies on the Fourteenth Amendment to the Constitution of the United States under which he claims the judgment and sentence of death affirmed by the court below will deprive him of life without due process of law.

STATUTORY PROVISIONS INVOLVED

Connecticut General Statutes, Sections 8727 and 485 (1949 Revision) upon which petitioner relies to demonstrate his illegal retention while the two alleged confessions were exacted, are set forth in Appendix E, infra p. 72.

STATEMENT OF THE CASE

Dorothy Kennedy, the proprietress of a liquor store at 193 Ocean Avenue in Town of West Haven, County of New Haven, Connecticut, was shot and killed on November 21, 1953.

This killing was unsolved when petitioner was presented in the City Court of New Haven on January 13, 1954, charged with attempted robbery, breaking and entering, and theft committed on January 9, 1954, at the Travelers Hotel in New Haven. Through private counsel, petitioner waived examination and was bound over to the April session of the Superior Court and placed in the New Haven County Jail through a duly issued mittimus (Record p. 39).

Shortly after 12:00 noon on January 30, 1954, by direction of a letter from the State's Attorney Abraham S. Ullman (Appendix D, infra, p. 70) the petitioner, while still confined under the City Court mittimus, was illegally removed without court order from the County Jail and delivered to the office of the State's Attorney. This removal was in violation of Connecticut General Statutes, Section 8727 (Appendix E, infra, p. 72-73), which expressly provides that an accused be held in the

county jail until the next criminal term of the Superior Court, or until he is discharged by due course of law. Both the majority and dissenting opinions of the Connecticut Supreme Court of Errors conceded the illegality of the removal. 143 Conn. 167, 174, 179, 181 (Appendix A, infra, pp. 21, 26, 27). Upon arriving at the State's Attorney's office, petitioner was told for the first time he was to be questioned about the Kennedy murder. He was not warned of any of his rights (Appendix B, infra, p. 37), and when he requested to consult with his lawyer (Appendix B, infra, pp. 41, 45), his request was not honored. Rogers testified he asked for counsel about an hour after his arrival. This testimony was uncontested by the police officers who were present at the time of this request. (Record p. 34.)

From approximately 1 P. M. until 12 midnight on January 30, petitioner was subjected to prolonged police interrogation. (Record pp. 40, 41.) Petitioner, a Negro, had at least one hand hand-cuffed throughout the interrogation by police officers questioning in relays (Appendix B, infra, p. 42) and most of the time both hands were so chained (Appendix B, infra, p. 44). For approximately eight hours the petitioner persistently denied involvement in the killing of Mrs. Kennedy (Record p. 40). Only after the assistant police chief threatened to have petitioner's wife, who was ill suffering from arthritis, taken into custody and his foster children turned over to juvenile authorities (Appendix B, infra, p. 42) (Record pp. 40, 41), did petitioner implicate himself in the resulting alleged confession. The police officer admitted pretending to make two telephone calls for the purpose of impressing petitioner with the advisability of giving a statement that the interrogator was then requesting. (Appendix B, infra, p. 34.)

On the morning of January 31, after petitioner had been returned to jail, the New Haven County Coroner ordered the jailer by telephone to hold petitioner incommunicado and not to let

him see his lawyer. (Appendix B, infra, p. 56.) The Coroner testified that "I left instructions that he wasn't to see anybody; that he was to be held incommunicado until I lifted that order." Shortly after this order, petitioner's privately-retained counsel demanded to consult petitioner, but the high sheriff of the county, after consulting with the State's Attorney, denied this request. (Record p. 35.) Although counsel was denied admittance to see his client, police officers were allowed to interrogate petitioner again. Later in the afternoon, petitioner was removed, without court order, to the Coroner's office where he made further incriminating statements. This removal was also in violation of Connecticut General Statutes Section 8727 since no court authorization was secured, and also Section 485 (Appendix E, infra, p. 72) since the Coroner admittedly made no determination of an alternative, appropriate place of confinement. (Appendix B, infra, pp. 59-60). The majority and dissenting opinions in the court below considered the removal of petitioner to the Coroner's office illegal, 143 Conn. 167, 173, 179, 181. (Appendix A, infra, pp. 21, 26, 27.) These statements to the Coroner were made only twelve to fourteen hours after the petitioner made the alleged confession in the State's Attorney's office. The Coroner admitted that he was aware of the earlier confession when he ordered petitioner to be brought before him for interrogation. (Appendix B, infra, p. 51.)

Thereafter, on March 2, 1954, the Grand Jury for the County of New Haven returned an indictment, in two counts, for first degree murder. His personal funds exhausted, petitioner was, and has since been, represented by the Public Defender for New Haven County. Petitioner entered a plea of not guilty to both counts, but later at the trial on petitioner's motion, the State's Attorney elected to proceed on only the first count, charging murder in the first degree in perpetration of a robbery—a capital offense.

At the State's Attorney's office, petitioner unsuccessfully demanded to see his counsel prior to making an alleged confession. At the jail the next day, counsel was denied access to petitioner under an incommunicado order from the Coroner. The State made no claim that this requested consultation would in anyway interfere with the reasonable operation of the jail. The fact that police officers were allowed to interrogate petitioner shortly after his own lawyer was denied admission indicates that the State's sole purpose was to prevent petitioner from receiving the advice of counsel until after he had been taken to the Coroner's inquest. Either of these interferences, on two successive days, were denials of petitioner's right to consult his privately-retained counsel. For over two decades, since the now famous case of *Powell* v. *Alabama*, 287 U.S. 45 (1932), this court has firmly held that the Fourteenth Amendment guarantees the right of the accused in capital cases to the effective assistance of counsel in the preparation and trial of his case. In discussing the Constitutional contents of a fair hearing, Mr. Justice Sutherland asked, "What then does a hearing include?" and answered:

> ". . . Historically and in practice, in our own country at least, it has always included the right to aid of counsel when *desired* and *provided* by the party asserting the right . . . He requires the guiding hand of counsel *at every step in the proceedings* against him . . . If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, *employed by* and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of hearing, and, therefore of due process in the constitutional sense . . ." (Emphasis added.) 287 U.S. 45 at 68, 69.

More recently, this court has reemphasized the right to effective representation by counsel in the unanimous declaration in *Chandler* v. *Fretag*, 348 U.S. 3 (1954):

> "Regardless of whether petitioner would have been entitled to appointment of counsel, his right to be heard from his

> own counsel was *unqualified* . . . A necessary corrollary is that a defendant must be given a reasonable opportunity to employ and *consult* with counsel." (Emphasis added.) 348 U.S. 3 at 9, 10.

Petitioner at bar *desired* counsel. He had *provided* for his own counsel. Under the *Powell* and *Chandler* doctrines, his unqualified right to counsel was interfered with when he was twice denied an opportunity to consult with his own attorney.

Under this court's general rule established in the *Powell* case, lower federal courts have detailed the Fourteenth Amendment's insistence on effective aid of counsel in state proceedings. It was held that the mere presence of a prosecution interpreter during an attorney-client consultation was an unconstitutional interference with the right to counsel in *Yung* v. *Coleman*, 5 F. Supp. 702 (1934). More recently, in *Application of Sullivan*, a federal court ruled that in capital cases the right to counsel is such a basic and fundamental right as to require its uniform availability to those accused of crime in both state and federal courts and that absence of counsel until after arraignment constituted denial of effective counsel. 126 F. Supp. 564, 570, 571 (1954).

The decisions of this court support the ruling in the *Sullivan* case, where appointment was involved, that in capital cases, the right to counsel is such a basic and fundamental right as to require its uniform availability in both state and federal courts. Although a majority of this court has not subscribed to the doctrine that the Fourteenth Amendment embraces the items of the Bill of Rights, this court's decisions indicate that when human life is in balance, fundamental principles of liberty and justice demand that state courts observe the same standards prescribed for the federal courts by the Sixth Amendment in regard to both appointment of counsel and acceptance of competent waiver. *Powell* v. *Alabama*, supra, *Williams* v. *Kaiser*, 323 U.S. 471 (1945); *Tompkins* v. *Missouri*, 323 U.S. 485 (1945). Under the *Powell*

ruling, there is no doubt that an accused in a capital case is entitled to self-retained counsel and a reasonable opportunity to consult with him, *Powell* v. *Alabama*, supra, at p. 69. Petitioner maintains that the right to consult—like the right to appointment and the right to be protected from incompetent waiver—is so basic and fundamental as to be uniformly available under both the Sixth and Fourteenth Amendments and that decisions by federal courts under the Sixth Amendment are relevant.

In *Coplon* v. *U.S.*, 191 F. 2d 749 (1951), on a motion for a mistrial, the Court of Appeals for the District of Columbia held that if the government merely intercepted telephone communications between attorney and client either before or during the accused's trial there was unconstitutional activity on the part of the government. The court added:

> ". . . It would not be an answer to say the accused can not complain of the interception of his telephone conversations with his counsel *if he had on other occasions ample personal consultation with his lawyer, face to face, which no person overheard. That fact would not erase the blot of unconstitutionality from the act of intercepting other consultations* . . ." (Emphasis added.) 191 F. 2d 749 at 759.

Under this ruling, the unconstitutional interference with petitioner's rights at the State's Attorney's office and at the jail—which prevented all consultation not merely deprived it of privacy—could not be erased by an explanation of his rights to petitioner at either the Coroner's hearing or at the trial. The court in the *Coplon* case used, as authority, cases where both federal and state courts defined the right to counsel in state prosecutions to point out that it is well established that an accused does not enjoy the effective aid of counsel if he is denied the right of private consultation.

In *Glasser* v. *U.S.*, 315 U.S. 60 (1942), this court used the *Powell* doctrine to point out that ". . . we [are] clear that the 'Assistance of Counsel' guaranteed by the Sixth Amendment contemplates that such assistance be untrammeled and unimpaired by a court order requiring that one lawyer shall simultaneously represent conflicting interests." This court added:

> "The right to have the assistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial." 315 U.S. 60 at 76.

An array of state decisions have emphasized the sanctity of the right of the accused to consult with counsel. In *In Re Snyder*, 62 Cal. App. 697, 217 Pac. 777 (1923), it was held that where a heavy wire screen made passing of papers between attorney and client impossible and other persons could hear the conversations, there was a denial of the right to consult counsel. Other state cases to the same effect, in regard to attorney-client consultation are *Ex parte Rider*, 50 Cal. App. 797, 195 P. 965 (1920), *People* v. *Shiffman*, 350 Ill. 243, 182 N.E. 760 (1932), and cases cited in the *Coplon* case at page 758. Although these decisions are not binding on the case at bar, this court used thirteen state court decisions as "support" in the *Powell* case:

> "Under the circumstances disclosed, we hold that the defendants were not accorded the right to counsel in any substantial sense. To decide otherwise, would simply be to ignore actualities. This conclusion finds *ample support* in the reasoning of an overwhelming array of state decisions, among which we cite the following: . . ." (Emphasis added.) *Powell* v. *Alabama*, supra, at 58.

Even under the less stringent standards adopted by this court in non-capital cases—whether under the circumstances the accused suffered fundamental injustice which was seriously prejudicial—petitioner has been denied the right to counsel. The standards applicable to non-capital cases are clear in *Townsend* v. *Burke*,

334 U.S. 736 (1948), where the court pointed out at page 739 that if the accused suffers a serious disadvantage without counsel, a violation of due process occurs. The circumstances of the case at bar emphasize that at the most critical period of the proceedings against petitioner—at and immediately prior to two interrogations during which two alleged confessions were exacted—when consultation was vitally important, petitioner was denied the aid of his own counsel. The action of the State resulted in petitioner being without counsel from the very instant he knew he was a suspect until he had twice confessed to a crime for which the state seeks his life.

ARGUMENT II: THE CONFESSIONS WERE INVOLUNTARY AND THEIR USE VIOLATED DUE PROCESS OF LAW

The use in a state criminal trial of a defendant's confession obtained by coercion—whether physical or mental—is forbidden by the Fourteenth Amendment. *Leyra* v. *Denno*, 347 U.S. 556, 558 (1954). Even though the evidence apart from the confession might have been sufficient to sustain the jury's verdict, the conviction will be set aside. *Malinski* v. *N. Y.*, 324 U.S. 401, 404 (1945). This court's criterion in regard to involuntary confessions was enunciated in *Watts* v. *Indiana*, 338 U.S. 49 (1949), where it was held:

> "A confession by which life becomes forfeit must be the expression of free choice. A statement to be voluntary of course need not be volunteered. But if it is the product of sustained pressure by the police it does not issue from free choice. When a suspect speaks because he is overborne, it is immaterial whether he has been subjected to a physical or mental ordeal. Eventual yielding to questioning under such circumstances is plainly the product of the suction process of interrogation and therefore the reverse of voluntary yielding . . ." 338 U.S. 49 at 53.

A determination of the circumstances, as shown by undisputed facts, indicates that neither confession in the case at bar was free from substantial police pressure so as to be the product of a free choice. At the State's Attorney's office, petitioner, a Negro, was interrogated, while illegally detained, for approximately twelve hours by police officials questioning in relays. Kept handcuffed, never informed of his rights and denied the right to consult counsel, the accused maintained his innocence until after the assistant police chief threatened to send for Roger's sick wife. In *Haley* v. *Ohio*, 332 U.S. 596 (1948), this court held a confession procured after only five hours of interrogation where an uneducated Negro accused was without benefit of counsel and unwarned of his rights was not voluntary. Only the age of the accused in the *Haley* case made the circumstances there less in conformance with the dictates of due process, but the court pointed out:

> ". . . Neither *man* nor child can be allowed to stand condemned by methods which flout constitutional requirements of due process of law." (Emphasis added.) 332 U.S. 596 at 601.

In the case at bar, the undisputed facts indicate that the first confession came only after the police threatened to bring petitioner's sick wife into custody and deliver his foster children to welfare authorities. The interrogator's fake phone calls in regard to bringing the wife into custody were admittedly designed to elicit the requested statement. The concept of due process adopted by this court voids a conviction procured on the basis of a confession induced by threats or promises. *Lisenba* v. *California*, 314 U.S. 219, 237 (1941). That threats as to conduct to be employed against other persons can violate the due process of law guaranteed to the accused is clear from the recent case of *Herman* v. *Claudy*, 350 U. S. 116 (1956) where this court held that threats to the accused's wife and children must be considered in determining if the accused is entitled to relief from a state court conviction.

Besides being procured after prolonged interrogation, threats to bring into custody petitioner's family, and a denial of counsel, the first confession was made while the accused was in illegal custody. Of course, this court does not have the corrective power over state courts that it has over the lower federal courts as expressed in *McNabb* v. *United States*, 318 U.S. 332 (1943). But the case at bar is dissimlar from *Gallegos* v. *Nebraska*, 342 U.S. 55 (1951) where the confession was challenged on the sole basis of unlawful detention. Almost two decades ago this court emphasized that illegal custody is an element in the totality of circumstances comprising a denial of due process in the confession area:

> "From the popular hatred and abhorrance of *illegal confinement*, torture and extortion of confessions of violations of the 'law of the land' evolved the fundamental idea that no man's life, liberty or property be forfeited as criminal punishment for violation of that law until there has been a charge fairly made and fairly tried in a public tribunal free of prejudice, passion, excitement, and tyrannical power." (Emphasis added.) *Chambers* v. *Florida*, 309 U.S. 227 at 236, 237 (1940).

From the totality of circumstances—threats, denial of counsel, prolonged interrogation, and illegal detention—surrounding the extraction of the confession at the State's Attorney's office, its use was a violation of the fundamental concepts of ordered liberty and justice required by due process of law.

When petitioner made the statements to the Coroner on January 31, he did so only after he had been denied communication with his counsel at the jail. This denial in itself was enough to make the resulting confession lacking in due process. But this second confession does not stand in isolation. The Coroner admitted the impetus for his interrogation was the knowledge of the prior confession. The second statement, also made while petitioner was illegally detained, came within twelve to fifteen

hours of the first. From these circumstances, the challenged confessions are, in effect, but one. The confession to the Coroner must fall with the tainted confession made to police officers the day before. As this court pointed out recently in the *Leyra* case:

> "All were simply parts of one continuous process . . . We hold that use of confessions extracted in such a manner from a lone defendant unprotected by counsel is not consistent with due process of law as required by our Constitution." *Leyra* v. *Denno*, supra, at 561.

The court below in sustaining the use of the two confessions challenged here, adopted a standard in patent conflict with this court's criteria of due process in the confession area. The Connecticut high court established as the test of involuntary confessions, ". . . whether, under these and other circumstances of the case, the conduct induced the defendant to confess *falsely* that he had committed the crime being investigated." (Emphasis added.) 143 Conn. 167, 173 (Appendix A, infra, p. 21). The court relied on the truth-falsity test again at page 174 (Appendix A, infra, p. 21) of the opinion where it said, "There is nothing about his illegal removal, however, to demonstrate that he was thereby forced to make an *untrue* statement" and ". . . here again, the question for the court to decide was whether this conduct induced the defendant to make an involuntary and hence *untrue* statement."

This truth-falsity standard adopted by the court below does not assure the accused the minimal protection of due process as demanded by the rulings of this court. This court has repeatedly held the use of involuntary confessions, despite the fact that there was sufficient independent evidence to insure the veracity of the statements contained therein, was a denial of due process. *Malinski* v. *New York*, 324 U. S. 401, 402, 404 (1945); *Lyons* v. *Oklahoma*, 322 U.S. 596, 597, n. 1 (1944); *Stroble* v. *California*,

343 U.S. 181, 190 (1952). In the *Rochin* case, the test approved by the Connecticut court below was unanimously rejected:

> ". . . Use of involuntary verbal confessions in State criminal trials is constitutionally obnoxious not only because of their unreliability. They are inadmissible under the Due Process Clause even though statements contained in them may be independently established as *true*. Coerced confessions offend the community's sense of fair play and decency." (Emphasis added.) *Rochin* v. *California*, 342 U.S. 165, 173 (1952).

To sum up:

By the clear standards of this court, the confessions were exacted under conditions which make their use in a capital case a deprivation of due process of law. Only through the application of a criterion in patent conflict with this court's rulings was their use sustained by the court below.

CONCLUSION

It is respectfully submitted, therefore, that this petition for a writ of certiorari be granted to correct the errors which otherwise will deprive petitioner of his life without due process of law.

THOMAS R. ROBINSON,
Public Defender of New Haven County,
LAWRENCE M. DOOLEY,
Special Assistant to the Public Defender,
Counsel for Petitioner.

APPENDIX A

Connecticut Supreme Court of Errors Opinions

STATE OF CONNECTICUT

vs.

HAROLD D. ROGERS

Inglis, C. J., Baldwin, O'Sullivan, Wynne and Daly, Js.

(One judge dissenting)

Argued December 9, 1955—decided January 27, 1956

Indictment charging the defendant with the crime of murder in the first degree committed in perpetrating a robbery, brought to the Superior Court in New Haven County and tried to the jury before MELLITZ, J.; verdict and judgment of guilty and appeal by the defendant. *No error.*

Thomas R. Robinson, public defender, with whom was *Lawrence M. Dooley*, special assistant to the public defender, for the appellant (defendant).

Abraham S. Ullman, state's attorney, with whom, on the brief, was *Arthur T. Gorman*, assistant state's attorney, for the appellee (state).

WYNNE, J. The defendant has appealed, after a trial to a jury, from his conviction on a charge of murder in the first degree. He was charged under § 8350 of the General Statutes with the shooting and killing of Dorothy Kennedy in the perpetration of a robbery of the package store operated by her and her husband, Joseph Kennedy, in West Haven. No recommendation for mercy having been made by the jury, the defendant was sentenced to the punishment of death. He has assigned error in sixteen particulars having to do with his trial. In brief and argument his counsel

have grouped them in four categories. As thus presented, the issues concern (1) the court's refusal to grant a motion for change of venue, (2) certain rulings of the court as to the legality of the defendant's restraint on the occasions of his statements to the police and the coroner, the rulings being later reflected in the charge, (3) the charge, which in terms discussed an attempted robbery although the indictment set forth only a charge of murder in perpetrating a robbery, and (4) several rulings pertaining to points of evidence. The defendant also assigns error in the finding of specific facts by the court and the court's conclusions, drawn from facts found, bearing upon the admissibility of statements made by the defendant to the police and to the coroner concerning the crime with which he was charged. These facts and conclusions have ample support in the evidence, and the finding is not subject to correction.

The state claimed to have proved the following facts: Dorothy Kennedy was shot and killed on November 21, 1953, in the West Shore Package Store at 143 Ocean Avenue in West Haven. She and her husband owned and operated the store. She was alone in the store at 7:30 P. M. on the day in question, and within a space of minutes thereafter the tragedy had taken place and the cash register was rifled, about $60 being taken. On January 9, 1954, the New Haven police were seeking to arrest the defendant on charges of attempted robbery, breaking and entering and theft committed that day at the Travelers Hotel in New Haven. That evening, officers located the defendant sitting in his car on Oak Street in New Haven. He had in his possession a .38 caliber Smith and Wesson revolver, which, it later appeared, he had stolen from his nephew before the shooting on November 21, 1953. He was arrested and presented in the City Court of New Haven on January 13, 1954, where he waived examination through private counsel and was bound over to the April session of the Superior Court and lodged in the New Haven County jail under a duly issued mittimus. On January 30, 1954, the revolver

which had been taken from him was turned over to the state police for testing, and it was found to have fired the bullets which killed Mrs. Kennedy. Thereafter, the defendant made statements to the police and to the coroner in which he admitted that he had killed Mrs. Kennedy. These statements were free and voluntary. Their truth was not disputed by any witness at the trial.

The defendant claimed to have proved the following: On January 30, 1954, in the evening, while he was still a bound-over prisoner at the jail, he was brought to the state's attorney's office and questioned by the police. His request to see his counsel was denied. When he disclaimed any knowledge of the shooting of Mrs. Kennedy, he was told that unless he confessed his wife would be brought down to police headquarters for questioning and their foster children would be sent to the children's building. He then gave a statement to the police which was offered and received in evidence. The following morning, January 31, the coroner by telephone instructed the sheriff to permit no one to see the defendant. Thereafter, his private counsel sought to see him, but opportunity was denied by the state's attorney. At noon on January 31, the defendant was taken to the coroner's office, was questioned and gave a statement which was later offered and admitted in evidence. The statements made by the defendant were so tainted by lack of due process of law as to be involuntary.

The defendant made two motions for a change of venue. Both were denied. The basis of the motions was the widespread publicity given the killing of Mrs. Kennedy while she was alone in the package store, and, later, the publicity attending the defendant's statements to the police and to the coroner. Section 8794 of the General Statutes provides that the judge holding any term of the Superior Court may, upon motion, order any criminal case pending in that court to be transferred to the Superior Court in any other county. We have had occasion to construe this statute and have held that the court exercises a discretion as to whether

untrue statement. *State* v. *Malm*, 142 Conn. 113, 121, 111 A. 2d 685. The court did not abuse its discretion in admitting the defendant's statements in evidence for consideration by the jury.

As to the claimed errors in the charge as given and in the refusal to charge as requested, the essential claim is that the court should have specifically charged the jury that the removal of the defendant from the county jail to the state's attorney office and to the hearing before the coroner and the refusal to permit counsel to see him at the jail were illegal and that the jury should consider these facts in deciding whether the confessions were voluntary or should be disregarded as involuntary.

The court cautioned the jury that the admission of the confessions meant no more than that the circumstances under which they were made were such that the jury should have them for consideration and that the ruling admitting them was not to be taken by the jury as giving them any more weight than the jury should decide to give them. The court told the jury that no confession or admission of an accused is admissible in evidence unless it was made freely and voluntarily and not under the influence of promises or threats, and that the employement of some artifice or deception to procure a confession does not render it inadmissible unless the artifice or deception was calculated to produce an untrue statement. The court then said: "[Y]ou will give these statements or confessions that you have before you whatever weight you consider they are entitled to, and in determining what weight you consider they are entitled to you consider all of the circumstances under which they were procured so far as these circumstances have been made known to you by the evidence. They include, among other things, the fact that the accused was in custody and under the control of the officers at the time; that he was kept in this status that has been described as incommunicado, and the other elements in the evidence before you: the manner in which he was taken from the jail to the State's Attor-

ney's office and to the Coroner's office and what transpired on each of those occasions; the facts relating to what was said to him about his desire for counsel and everything else that you recall as being disclosed to you by the evidence, as to the circumstances under which the confessions and statements were made. All of the circumstances leading up to the making of these confessions, I say to you, are proper for you to consider in determining the weight that you are to give them. I want to repeat this. It is not wrongful for a police officer to question an accused person about an alleged crime. A confession made to a police officer is not inadmissible for that reason alone and a confession made by artifice, by trick or design, is not inadmissible for any one of those reasons alone. A confession made when a person is illegally detained is not inadmissible for that reason alone. The rules which surround the use of a confession are designed and put into operation because of the desire expressed in the law that the confession, if used, be probably a true confession. . . . It is for you to determine what weight you are to give to them, and in that connection, as I have said, you should consider the circumstances under which they were made as the circumstances appear in evidence before you."

The question that the jury had to decide in this connection was whether the impact of the officers' conduct on the mind of the defendant was such as was likely to result in an involuntary or untrue statement. This impact would be the same whether the conduct was lawful or unlawful. Consequently, it would not have assisted the jury in their decision of the question to have been told that the conduct was unlawful. Under the circumstances of this case the charge given was correct and adequate for the guidance of the jury.

It is a play upon words to argue that the defendant was prejudiced by the court's charge discussing an attempt as well as a completed perpetration of a robbery. Whatever was done on the

evening of November 21, 1953, involved the robbery of Mrs. Kennedy, who, with her husband, owned the money in the cash register. Whether she was killed before the money was taken or whether she was killed moments thereafter, we fail to see that the court was in any way enlarging the letter of the indictment. An attempt at robbery is of the same significance as an actual robbery, if in either instance a life is taken. A charge of attempt is included within the charge of a completed offense. Both crimes are included in the definition of murder in the first degree contained in the statute, § 8350, under which the defendant was charged. The indictment charges that the defendant "did in perpetrating a Robbery murder one Dorothy Kennedy by shooting her." The words of the statute "in perpetrating, or in attempting to perpetrate, any . . . robbery" mean a killing done at any time within a sequence of events directly connected with a robbery and the escape from the scene of it. Upon the facts of this case, it is inconsequential whether the particular crime in the perpetration of which the killing occurred was actually completed or failed and for that reason could be described technically as merely an attempt. 4 Warren, Homicide (Perm. Ed.) p. 94; *People* v. *Boss*, 210 Cal. 245, 251, 290 P. 881; *Conrad* v. *State*, 75 Ohio St. 52, 70, 78 N.E. 957; *Commonwealth* v. *Hough*, 358 Pa. 247, 250, 56 A. 2d 84. Furthermore, the jury returned a verdict of guilty of murder in the first degree in perpetrating a robbery. This was consistent with the unchallenged claim of proof made by the state that the defendant took $60 from the cash register in the deceased's package store. The court's reference in its charge to an attempt to commit robbery manifestly did not affect the verdict.

The denial of the defendant's motion for a mistrial offers the only remaining question which requires discussion. It appears that Vera Evans, a witness called by the defendant, testified that she had known him for thirty-two years, that he had been hospitalized because of carbon monoxide poisoning in 1948, and that

she had noticed a change in him after that hospitalization. On cross-examination, the state's attorney asked the witness if she was aware of the fact that the defendant had committed the crime of robbery before 1948. The defendant claims that the question was improper and brought to the attention of the jury a very damaging connotation. The question was excluded, and no answer was given. Aside from the fact that the question was proper cross-examination as bearing upon the witness' knowledge of the personality of the defendant within the period of her acquaintance with him, the court not only excluded it but clearly instructed the jury that they were not to be influenced by it in any way. *State* v. *McLaughlin*, 126 Conn. 257, 263, 10 A. 2d 758. The motion for a mistrial was properly denied.

We have reviewed the several other rulings enumerated in the final grouping of errors. The defendant's exceptions to those rulings have no merit. See *State* v. *Donahue*, 141 Conn. 656, 667, 109 A. 2d 364.

There is no error.

In this opinion INGLIS, C. J., BALDWIN and DALY, Js., concurred.

O'SULLIVAN, J. (dissenting). I am in accord with that part of the opinion which deals with the court's denial of the motions for a change of venue and for a mistrial. But I am in disagreement with the ultimate result reached by my colleagues because of the court's refusal to charge, as requested, concerning the so-called confessions.

The defendant had submitted certain requests in writing in order to meet the following factual situation, which the jury might reasonably have accepted upon the evidence submitted to them: On January 9, 1954, that is, about six weeks after Mrs. Dorothy Kennedy had been shot and killed in West Haven, the defendant

was arrested by the New Haven police on a charge of statutory burglary committed earlier that day at a local hotel. He immediately engaged counsel, who thereafter represented him during the time covered by the events of this narrative. On January 13, the defendant was presented to the City Court to answer to the charge of burglary. On the advice of counsel he waived examination, was bound over to the Superior Court and, in default of bail, was committed to the county jail by virtue of a mittimus properly issued by the City Court.

Beginning on January 30, the authorities investigating the death of Mrs. Kennedy indulged in a series of illegal acts affecting the defendant. These acts culminated in his giving the two alleged confessions. The way it came about was this: About noon on January 30, the police took the defendant from the county jail and brought him to the state's attorney's office. Upon arriving there, he was told for the first time that he was to be questioned about the death of Mrs. Kennedy. He immediately asked to see his lawyer. Not only was this request refused but he was thereafter subjected to a prolonged interrogation from approximately 1 P. M. until the early morning hours of the following day. Only after the police had threatened to take his sick wife into custody and to turn his and his wife's foster children over to the juvenile authorties, and had pretended to make two telephone calls to put that threat into effect, did the defendant reverse his previous persistent denials and involve himself in the killing of Mrs. Kennedy.

On the morning of January 31, after the defendant had been returned to jail, the coroner for New Haven County ordered the jailer by telephone to hold him incommunicado and, above all else, not to let him see his lawyer, Chester T. Corse. Shortly after this order had been given, Corse arrived at the jail and asked to see the defendant. The high sheriff of the county, who happened to be there at the time, called the state's attorney and

was told that under no circumstances was the defendant to be allowed to talk with Corse. About noon of the same day, police officers arrived at the jail, and, over Corse's objection, were permitted to interrogate the defendant again. Later in the afternoon, he was taken from the jail and brought to the coroner's office, where he made further incriminating statements. The statements given to the police and to the coroner were reduced to writing, were signed by the defendant, and were introduced into evidence at the trial.

The defendant filed a written request to charge.[1] It seems to me that, in denying the request, the court committed harmful error. Indeed, with the death penalty involved, the court should have gone even further than the defendant asked it to go. For if the jury found the facts narrated above to be true, they should have been told that at least the confession to the coroner could not, as a matter of law, be deemed to be voluntary.

The removal of the defendant on January 30 and his detention for over twelve hours in the state's attorney's office were clearly illegal. So too were his removal from jail and his detention in the coroner's office on the following day. While the investigating authorities have the duty of attempting to solve crime and of bringing criminals to trial, that does not confer upon them any

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[1] The request read as follows: "In determining what weight you should give to the confessions of the accused, you must determine whether they were given voluntarily and if you find that they were in any respect involuntary you may disregard all or any part of them. In determining their voluntariness and the weight that you should give to them, you may take into account the following factors: (a) The transportation of the accused to the office of the State's Attorney on January 30, 1954, was illegal and improper. . . . (b) The transportation of the accused to the Coroner's hearing on January 31, 1954, was illegal and improper. . . . (f) It was illegal and improper to deny the accused access to counsel, if you find that he was so denied, on January 30 and 31, 1954."

right to use unlawful measures to attain their end. See *State* v. *Marquardt*, 139 Conn. 1, 89 A. 2d 219. Those who become suspect do not thereby become the chattels, so to speak, of the investigators. The illegal practices in the instance under discussion cannot be condoned, even though they may have conformed to a long-established custom of the county and were pursued in an effort to ascertain the murderer of Mrs. Kennedy. Until legal process, issuing from a proper source, superseded the mittimus under which the defendant was to be safely kept within the jail, the investigators had no legal right to bring him, as they did, before either the state's attorney or the coroner.

However, if the two removals of the defendant and the two detentions were the only illegal acts perpetrated on him, one might deplore them without necessarily challenging the voluntariness of the confessions that followed. But where we are met with orders barring an accused from conferring with his counsel, we reach what seems to me to be constitutional illegality. See *Stroble* v. *California*, 343 U.S. 181, 198, 72 S. Ct. 599, 96 L. Ed. 872. Such orders involve the denial of due process guaranteed by the fourteenth amendment to the federal constitution. See *Pennsylvania ex rel. Herman* v. *Claudy*, —— U.S. ——, 76 S. Ct. 223, 100 L. Ed. (advance pp. 141, 143). The court should have granted the defendant's request to charge and, going further, have instructed the jury that if they found that the coroner had, by an order to the jailer on January 31, barred the defendant from conferring with his counsel at reasonable times, the confession subsequently given to the coroner should be completely disregarded. No matter how evil an individual may be, he is entitled to insist that, if he is to be convicted, the verdict shall be reached upon proper and adequate instructions from the court.

APPENDIX B

Appendix of Defendant-Appellant before the Supreme Court of Errors of Connecticut

Wednesday, May 19, 1954

Morning Session

(Jurors and Alternates seated at 10:11 A. M.)

(Roll call of Jurors and Alternates by Mr. Leonard Gilhuly.)

The COURT. Be seated, please. You may proceed.

Mr. ULLMAN. Please the Court, and ladies and gentlemen: The trial of a first degree murder case is not a pleasant task. It isn't a pleasant task for anyone involved in it; not for counsel, not for the Court, and not for the jury, but, in this particular case, that task is rendered considerably easier by reason that the area of conflict between the State and the defense has been reduced so as to be almost non-existent. You will all recognize, no doubt, that there is no claim being made here, as far as I have been able to observe that this accused did not commit the crime. There is no claim here, as there is in many other cases, that the accused wasn't there; that it was somebody else. No such claim made here at all, and although, for a time, the defense seemed to want to adopt the claim of the accused as made in his confession, the claim of intimacy between the accused and the deceased, the claim of drinking for about an hour before this shooting occurred; although you remember they searched and tried to find, persistently, a bottle of liquor on the floor of that establishment as claimed by the accused in his fantastic statement made to the police and made to the Coroner. (Tr. p. 613)

Raymond J. Eagan

(Sworn by Mr. Falsey)

Direct Examination by Mr. Ullman

The CLERK. State your full name, please?

The WITNESS. Raymond J. Eagan.

Q. You are Assistant Chief of Police of the New Haven Police Department? A. I am, sir.

Q. And were you such on the 30th of January of this year? A. I was.

Q. And on that day, sometime during that day, did you see the accused, Harold Rogers? A. I did.

Q. Where did you see him? A. In your office. That is eight o'clock at night.

Q. About eight o'clock at night.

Mr. CORSE. Please the Court, I think the jury should be excused before we go further at this point.

Mr. ULLMAN. Well, this is a little premature. I would say, in about two or three more questions.

Mr. CORSE. Two or three questions. A little bit of what I am afraid of, Mr. Ullman.

Mr. ULLMAN. Well, I see no—

The COURT. Go ahead.

Mr. CORSE. Have an exception, your honor?

The COURT. Certainly. Overrule the objection.

Exception may be noted.

Q. And were there other officers present? A. There were.

Q. At the time? A. Yes, sir.

Q. And did you talk to Rogers? A. I did. (Tr. p. 446)

Q. Did he talk to you? A. He did.

Q. And at sometime or other, did he make some statements to you? A. He did.

Q. With respect to the death of Mrs. Dorothy Kennedy— A. He did.

Q. In West Haven? A. He did, sir.

Q. He did. And were those statements taken down in shorthand? A. They were.

Q. By an official court reporter? A. Yes, sir.

Q. And later transcribed? A. Yes, sir.

Q. And did that statement consist of questions and answers? A. Yes, sir.

Q. Questions by you and answers by the accused? A. Yes, sir.

Q. I show you this transcript and ask you whether this is the record of the questions and answers that you have referred to? A. I would say that's it, sir.

Q. And before this, when statements were taken, were any threats made?

Mr. CORSE. This is objected to, if the Court pleases. That goes to the admissibility which should be decided in the absence of the jury.

Mr. ULLMAN. I have no objection to that at this point.

The COURT. I am going to ask you, ladies and gentlemen, to go into your room.

(The jurors and alternates retired at 2:34 P. M.)

Q. I will now ask you, Chief, first, were any threats of harm or coercion, or of any kind, made by you or by anybody in your presence to Rogers before or during the taking of this statement? A. There were not. (Tr. p. 447)

Q. Was any force or pressure used upon him? A. There was not.

Q. Was there any promise of reward of any sort offered to him? A. None.

Q. Did he answer the questions directly and freely as you put them to him?

Mr. CORSE. I object to this, if your honor please. Leading, for one thing, and another thing is whether they are direct or not, will not affect the admissibility.

The COURT. I think you can get the same answer, Mr. Ullman, by asking the questions in different form so that they won't be leading.

Q. How did he answer you; how did he give his answers to you as you questioned him? A. As I asked him the questions he freely answered, without hesitancy at all.

Q. And was it necessary to repeat a question several times before the accused did make an answer? A. No, sir.

Q. At the time—question withdrawn. You say that you started this questioning, I believe you said somewhere around eight o'clock? A. I arrived at eight. Shortly after eight I started to talk to him.

Q. All right. And how long did the questioning continue? A. I talked to him—I will have to give the time that was given to me, the length of time, which is approximate in my mind also, from approximately ten after eight to around 10:20. (Tr. p. 448)

Mr. ROBINSON. What was the time? 10:20?

The WITNESS. About 10:20 or a little after; 10:25, possibly.

Q. And did you talk before any transcription— A. Pardon me. I should have said that was the time I talked to him before the transcript was made. Before the statement was made.

Q. And when did you transcribe—the stenographic transcript was started? A. Oh, probably a half hour afterwards, I'd say.

Mr. ROBINSON. After 10:20?

The WITNESS. Yes, sir.

Mr. ULLMAN. I think you may inquire.

The WITNESS. My best recollection on time, I think about a half hour afterwards.

Mr. ULLMAN. You may inquire.

Cross-examination by Mr. Corse.

Q. To your knowledge, how long was it, Rogers was in the State's Attorney's office that day? A. I have nothing but hearsay. I don't know what time he was there. I first saw him approximately eight o'clock.

Q. You had not been there prior to that time? A. I had not, no, sir.

Q. At any time did he express a desire to see his attorney? A. He did not.

Q. Or to see Mr. Robinson? A. No, sir.

Q. Was there some discussion between you and him about the whereabouts of his wife? A. Discussion of the whereabouts of his wife? (Tr. p. 449)

Q. Yes. A. No, sir. I did talk about his wife, but not her whereabouts.

Q. Did you talk to him about having his wife brought down for questioning? A. I did.

Q. What did you say about that? A. I told him that I would figure I would call his wife down to talk to her. He wanted to know why I should bother her. I said I didn't know, but she may have some knowledge of the thing we are talking to you about.

Q. And was that after you had said that he gave you—if he gave you the statement that was later transcribed? A. No, sir. Probably an hour afterwards.

Q. It was after that? A. After that.

Q. Did you tell Rogers that you had made arrangements for transportation to bring his wife down? A. I told him I was going to call my office to prepare it.

Q. Did you tell him that he would be less than a man if he permitted you to bring her down, as you suggested, for questioning? A. No, sir.

Q. Did you tell him that you wouldn't bring her down for questioning if he gave you a statement? A. I did not.

Q. Did you call up, in Roger's presence, and instruct your office to hold up the transportation for Mrs. Rogers for an hour? A. I made a call, yes, sir.

Q. And was that in substance, the call? A. That was the substance of the call, yes, sir. (Tr. p. 450)

Q. Was he under any restraint, physical restraint? A. I think he had handcuffs on.

Q. Did he have anything else on? A. No, sir.

Q. By way of restraint? A. No, sir.

Q. He had no— A. Belt, no, sir. I think he had handcuffs on. I am very sure he had handcuffs on him.

Q. At any time while you were with him was he released from those handcuffs? A. It is my recollection, the cuff was on one hand and the other was open.

Mr. ULLMAN. Was what?

The WITNESS. Open.

Q. Was that pair of handcuffs cuffed to the chair? A. I am certain, because I sat, later, close to him afterwards, and I remember that one wrist was cuffed and the other wasn't. Now, whether it had been on a chair previous to my being there I don't know. (Tr. p. 453)

Q. Did you know, at the time you were questioning Mr. Rogers, that he had been under interrogation by other officers for the greater part of the afternoon if not all of it? A. I was led to believe so, yes. I had no knowledge of my own other than I was told.

Q. How did you happen to come over there at that time? A. I was called.

Q. By whom? A. Sergeant Mulhern.

Q. Was it for some special purpose that he called you? A. He called me to ask me would I come down and talk to Rogers.

Q. Did he tell you what Rogers had said up to that time? A. No, he didn't.

Q. Did he—when did he tell you? A. When I arrived there.

Q. And what had he said up to that time? A. Sergeant Mulhern told me, in the few minutes I talked to him there, that they had talked to Rogers during the afternoon and had been unable to get any information from him.

Q. Any information, that is, you mean related, so far as you know, related to the case? A. That is true.

Q. Didn't Mulhern tell you that Rogers had asked for his attorney or had asked for Mr. Robinson? A. He did not.

Q. Did anyone give you that information? A. No one.

Q. You would not have informed Mr. Robinson if he had given you that inforamtion, would you? A. Under the circumstances I don't think I would. I was called. I talked to him as long as the man was willing to talk to me.

Q. Did you tell him that he was entitled to the advice of an attorney? (Tr. p. 454)

Mr. ULLMAN. Object to that, if your honor please. I know of no such rule.

Mr. CORSE. Did your honor rule? I didn't hear.

The COURT. Well, I will allow it to be answered. I will overrule the objection.

The WITNESS. Ask the question.

(Question read.)

The WITNESS. I did not.

Q. Did you tell him that anything he said would be used against him? A. I did not.

Q. Did you tell him that he didn't have to say anything to you? A. No, sir, I did not.

Q. In your direct examination, answering Mr. Ullman's questions regarding —preliminary to the statement, you were speaking only of the period between eight and ten-twenty? A. That's right, sir.

Q. You don't know what somebody else might have said to him before that time? A. I do not.

Q. Had you, at that time, received a report from Lieutenant Chameroy regarding anything to do with Rogers? A. Not from Leiutenant Chameroy, no, sir.

Q. Well, had you received a ballistic report from someone else? A. I received a phone call from Major Remer.

Q. Did you tell Rogers that you had a definite identification of this gun? A. I told him of the ballistics, what had been reported by the State Police to us.

Q. When did you tell him that? A. While I was talking to him. Shortly after I started talking to him. (Tr. p. 455)

Q. Shortly after eight o'clock, in other words? A. That's right.

Q. And he continued to deny any involvement in the case until after the fake telephone call with regard to his wife. Is that correct? A. Well, I say there was an hour's difference between the time I made the call and the time he started to talk.

Q. That I understand, but that was after he— A. Oh, that is after, yes, after the call.

Q. And after you had told him about these ballistic reports he still mainatined his denial until after the call to Mrs. Rogers? Right? A. Yes.

Q. Did Rogers, at sometime during the evening, talk to Detective Flanagan in your presence? A. Detective Flanagan was present while I was talking to him.

Q. Who else was present? A. That was all, in that first period.

Q. Just you and Flanagan? A. That's all, sir.

Mr. ROBINSON. May I see the document you let me look at first, Mr. Ullman?

Mr. ULLMAN. What?

Mr. ROBINSON. May I see the transcript a minute?

Mr. ULLMAN. It isn't in evidence yet.

Mr. CORSE. Is there any objection to our having a quick look at it?

Mr. ROBINSON. I don't want to ask any questions. I just looked at it once. (Tr. p. 456)

Mr. CORSE. Mr. Robinson and I differed on a certain point.

Mr. ULLMAN. I don't know whether you should have even read it first. I will let you see it.

Mr. CORSE. I haven't any further questions of this witness, if your honor please. I think that the burden is on the State, however, to show the course of events from two o'clock on.

Mr. ULLMAN. I don't see any necessity for doing it. Have you finished? If your honor please. I think it has been established that this confession should be admitted.

Mr. CORSE. Well, I would wish to present further evidence on that point in any case, but I would assume that the State would wish to make at least some claim with regard to the two o'clock period to which this witness says—about which this witness says he knows nothing, except he knows, through hearsay, it is true, that the accused was down here from two o'clock until eight o'clock, a period of some six hours.

The COURT. Well, all I can rule on is evidence and questions of evidence, and at this time there is nothing before me for ruling.

Mr. ULLMAN. At this point I have no further evidence.

Mr. ROBINSON. Have you anything further?

Mr. ULLMAN. No, except the transcript of the confession.

(Tr. p. 457)

Mr. CORSE. In that case, if your honor please, I would put the accused on the stand for the limited purpose of going into the admissibility of the statement.

Mr. ULLMAN. That is all, for the moment. (Tr. p. 458)

Harold D. Rogers

(Sworn by Mr. Falsey)

Direct Examination by Mr. Corse

The CLERK. State your full name?

The WITNESS. Harold D. Rogers.

Q. You are the accused in this case, Mr. Rogers? A. Yes.

Q. Were you brought—question withdrawn. Do you remember the afternoon of January 30? A. I do.

Q. This year? A. I do.

Q. Did you come to the State's Attorney's office at sometime during that day? A. I did.

Q. And where were you during the day, prior to the time you were brought to the State's Attorney's office. A. In the New Haven County Jail.

Q. What time was it that you left the jail to come to the State's Attorney's office? A. A little after dinner time. I don't know the exact time, but a little after dinner.

Q. What time is dinner time at the jail? A. 11:30 to 12.

Q. Now, who accompanied you from the jail to the State's Attorney's office? A. I think Sergeant Mulroon. I don't know whether the other two—two detectives, I don't know who they were.

Q. Sergeant Mulhern. A. You mean when I come down—

Q. When you were brought down? A. Chief Redding—High Sheriff Redding.

Q. When you came to the State's Attorney's office. A. No, Sergeant Mulroon and two other detectives. (Tr. p. 459)

Q. Sergeant Mulhern and two other detectives, they brought you down in what sort of vehicle; what kind of car. Was it a squad car? A. I think it was squad car.

Q. Did they put any handcuffs, or similar objects on you? A. Yes.

Q. What did they do? A. They put on a pair of handcuffs.

Q. They put on a pair of handcuffs? A. Yes, sir.

Q. Between the two wrists? A. That's right.

Q. Anything else? A. Not when I came down. Not that time. They only put two handcuffs—one handcuff on me.

Q. And where were you brought too? A. To the District Attorney's office—State's Attorney's office.

Q. That is the office in this building— A. That's right. The last room.

Q. That is across the hall. And what did you do when you got there? A. They brought me in and sat me down. Nobody said nothing to me for about a hour.

Q. Where did they sit you? A. On the side facing the desk, with my back up facing that way (indicating).

Q. Your back facing that way? A. That's right.

Q. Did you still have the handcuffs on? A. That's right.

Q. Were they handcuffs wrist to wrist or were they? A. Wrist to wrist.

Q. Wrist to wrist. Were those handcuffs removed at any time during that day? A. No.

Q. Now, after you arrived in the State's Attorney's office, did you have any conversation with anyone in regard to a lawyer? A. Yes, I asked Captain Mulroon, I told hem I wanted to see my lawyer. (Tr. p. 460)

Q. When was this? A. After I got there a little while, when he first started talking to me.

Q. About how long after you got there? A. A little over an hour.

Q. What did Captain Mulhern say? A. He didn't even answer me.

Q. Was anyone else present at the time you asked Sergeant Mulroon—can we agree he is a sergeant, Mr. Ullman? Sergeant Mulhern. A. There's two detectives. I don't know just exactly who they were. I think one was Ruggiero.

Q. Who was your lawyer at that time? A. Mr. Robinson and you.

Q. Did you tell Mr.—Sergeant Mulhern that Mr.. Robinson was your lawyer? A. No, he didn't answer me. I didn't name him. I said I wanted to see my lawyer, that's all.

Q. What happened—question withdrawn. You say that this occurred shortly after you got there, is that right? A. About an hour.

Q. About an hour after you got there? A. That's right.

Q. What had taken place during that hour? A. They told me that the gun that I was supposed to have been caught with was the gun that committed the crime in West Haven and I didn't know a thing; have any knowledge of it.

Q. You told them that? A. That's right.

Q. Did they ask you anything else? A. They said, "You did it, so why not admit it."

Q. When you say "they" said this, what do you mean by "they"? A. I am talking about Sergeant Mulroom. (Tr. p. 461)

Q. Mulhern. A. Mulhern, or whatever his name is.

Q. Anything else? A. And Lazzari sat in there with them and he said the same thing.

Q. Anything else? A. The other one didn't say anything.

Q. For how long, Harold, did they keep on questioning you in this way? A. Until Chief Eagan come in.

Q. I think Chief Eagan testified he came about eight o'clock. Is that correct? A. Yes.

Q. Is that correct, according to your memory? A. That's right.

Q. So that you were in the office from shortly after dinner time? A. That's right.

Q. Until Chief Eagan arrived at eight o'clock? A. That's right.

Q. And during all that time were they questioning you? A. Indirectly. One after the other. They said, "You did it; why don't you commit—why don't you admit it." I said I didn't know anything about it; never knew anything about the place.

Q. And what happened after Chief Eagan arrived? A. He said he was going to check my wife up and have her come down and have the two children and he picked up the telephone. I thought he was telephoning. He was talking to Headquarters. Said "Get a squad car ready to pick up Mrs. Rogers and have the matron pick up the two children and take them some place and keep them over night. Well, bring her down there for questioning, keep her down there over night if necessary." He said, "You'll be less than a man if you let your wife come down" and I knew she was sick. (Tr. p. 462)

Q. Did he say anything about holding it up for an hour? A. Yes, he said he would give me an hour, indirectly. He didn't say exactly that, indirectly, he didn't exactly say. He told them over the phone to hold that car for an hour and he could call up and tell them directly when to send for her, gave me the impression he gave me an hour to confess.

Q. Is that the reason you gave him this statement? A. That's right.

Mr. CORSE. You may inquire.

Cross-examination by Mr. Ullman.

Q. Did you use the whole hour to consider whether you were to confess? A. That's right.

Q. You used the whole hour? A. That's right.

Q. And at the end of that hour, after that hour's consideration, he went to the telephone, picked up the phone, and was it then that you made the confession? A. That's right.

Q. And that was because of what he said to you about your wife? A. That's right.

Q. Coming down? A. That's right.

Q. And did Chief Eagan say that—tell you that he felt you had committed this crime? A. That's right.

Q. And did he tell you also that he felt that your wife had some knowledge? A. No, he didn't.

Q. Didn't he say that your wife may be able to tell something about it? A. No, sir, he didn't. (Tr. p. 463)

Q. Didn't he ask you whether you had some conversations with your wife? A. Yes.

Q. Regarding that crime? A. Yes. Q. Now, you did have something to eat and drink down here, didn't you? A. I had a cup of coffee.

Q. You had something. A. I had a sandwich about four o'clock and a cup of coffee.

Q. So that you did eat your full lunch at noon at the jail? A. I didn't eat any lunch.

Q. What? A. I didn't eat up there half the time.

Q. Well, at least, it was given you? A. That's right.

Q. It was offered to you? A. That's right.

Q. You could have eaten it if you wanted to? A. That's right.

Q. Do you know whether you did eat it? A. No, I didn't.

Q. Why didn't you eat it? A. I eated in the morning, cereal.

Q. Did you eat anything at noon? A. No.

Q. Nothing at all? A. I waited until the store opened so I could get some milk.

Q. Didn't you have anything to eat at all at the jail? A. No.

Q. How soon after you arrived were you offered something to eat and drink? A. About four o'clock.

Q. Four o'clock, and what did you have then? A. Hamburg sandwich and a cup of coffee.

Q. Were you fed or did you eat it yourself? A. I ate that myself. (Tr. p. 464)

Q. And how did you hold the sandwich? A. I had one—they took one cuff off at that time.

Q. That's right. You had one cuff off? A. That's right.

Q. In other words, there were times, were there not, when you had one of your hands free? A. Only the time when I was eating, that's all.

Q. Wasn't it also free at other times during the course of that day? A. No.

Q. Was your one wrist cuffed at all to the handle of the chair at any time? A. No.

Q. All right. Now, how many sandwiches did you have? A. One.

Q. And how many cups of coffee did you have? A. One at that time and one later when Chief Eagan came in.

Q. So that you were given one sandwich and one cup of coffee? A. That's right.

Q. Were you satisfied on eating that one sandwich at four o'clock? A. I had to be satisfied.

Q. What? A. I had to be satisfied. I wasn't asked did I want any more or not. I took what I got.

Q. Did you ask for any more? A. No.

Q. Did you want any more? A. I could have used another one.

Q. You could have used another one. Were you offered something to eat after Chief Egan arrived? A. No, they asked me did I want any coffee. I had a cup of coffee.

Q. You didn't say you wanted any more? A. No.

Q. Did you get a sandwich then—did you want a sandwich then? A. Yes, I could have stood one. (Tr. p. 464)

Q. But you didn't say so, did you? A. That's right.

Q. They asked what you wanted and you said a cup of coffee? A. He said, "Do you want a cup of coffee?"

Q. Didn't he ask you what you wanted? A. He said, "Do you want a cup of coffee" and I said "yes."

Q. You never mentioned the name of your lawyer, did you? A. To who?

Q. Chief Eagan. A. Yes, I did.

Q. I thought you said a minute ago, in answer to your counsel's question, your lawyer's question, that you didn't mention the name of the lawyer? A. I didn't name him, but I said I wanted to see my lawyer. I didn't name him.

Q. You didn't give the name of your lawyer? A. No, I didn't.

Q. At any time? A. No. The first time I wasn't even answered.

Q. At that time Mr. Robinson and Mr. Corse were representing you as your private counsel, were they not? A. That's right.

Q. They are public defenders for you now? A. That's right.

Q. But at that time they were private counsel? A. That's right.

Q. Was any force used on you at all? A. What do you mean by force?

Q. Well, what do you mean? A. You asked the question.

(Tr. p. 465)

Q. Well then, apparently none was used if you don't recognize it. I won't pursue that any further, but you did think this over for an hour? A. That's right.

Q. Before you confessed? A. That's right.

Q. And you say that you gave this confession because of the fact that you wanted to avoid the necessity of your wife— A. That's right.

Q. To come down here? A. That's right. She had arthritis. She couldn't hardly walk.

Q. Is that the only reason you gave the confession? A. Because—what do you mean, the only reason?

Q. Is there anything unclear about that? A. Yes, repeat that again.

Q. You said a moment ago that you gave that confession because you wanted to avoid the necessity of your wife coming down here that night. A. That's right.

Q. And that was the reason you gave the confession? A. That's right.

Q. And did you tell the truth in the confession?

Mr. CORSE. Objected to, if the Court please.

Mr. ULLMAN. No further questions.

Mr. ROBINSON. Not material.

Mr. CORSE. I move that be stricken from the record.

Mr. ULLMAN. What?

The COURT. He didn't answer it. I know he hasn't answered it.

Mr. ULLMAN. The question be stricken out?

The COURT. Strike out the question. (Tr. p. 466)

Mr. ULLMAN. It hasn't been answered. I don't know why it should be stricken from the record. (Tr. p. 467)

James J. Corrigan, Esq.

(Sworn by Mr. Falsey)

Direct Examination by Mr. Ullman

The CLERK. State your full name, please?

The WITNESS. James J. Corrigan.

The CLERK. Thank you.

Q. You are the Coroner for New Haven County? A. Yes, sir.

Q. And as such did you investigate the circumstances of the death of Mrs. Dorothy Kennedy in West Haven on the 21st of November, 1953? A. I did, sir.

Q. And in the course of your investigation did you, sometime, question and examine the accused Harold Rogers? A. I did, sir.

Q. And will you tell us when you conducted your examination of Rogers? A. Sunday afternoon, January 31.

Q. And where? A. In the County Court House, in Room 25, which is upstairs.

Q. And was a stenographic record made of that examination? A. Yes, sir.

Q. And by whom? A. By Mr. Robert Lyman, Mr. Whay's assistant, court stenographer in the Superior Court.

Q. And in connection with your questioning of Rogers and immediately preceding the actual questioning, did you make a statement to him? A. Yes, I did.

Q. And that—did that include a statement that what he said might be used against him?

Mr. ROBINSON. I object to this.

Q. And other matters? (Tr. p. 501)

Mr. ROBINSON. I ask that the jury be excused. We have had the same question here before.

Mr. ULLMAN. I think this might be done in the presence of the jury. I am not going to offer the statement until—

Mr. ROBINSON. Well, it is going to come in question with this last statement before the Coroner, as it did in the case of Cap-

Q. And do you remember when it was that you issued the mittimus for Rogers under which he was thereafter held up in the County Jail? A. I know that it was in the morning I (503) know that I left the scene of the gas explosion and came to my office, and my best recollection as to that, it was sometime before eleven o'clock in the morning, that Sunday morning.

Q. And do you know what was done with the mittimus after you signed it? A. Well, I know that I sent for—I called the Detective Bureau and had one of the detectives come to my office. No, I beg your pardon. I think I called the West Haven Police, but I gave it to a police officer. Now, which one I don't recall at this point.

Q. For delivery to the jail? A. For delivery to the jail, yes, sir.

Mr. ULLMAN. You may inquire.

Cross-examination by Mr. Robinson.

Q. Now, you filed the testimony in this connection, Mr. Corrigan, with the Superior Court, in pursuance of the statute? A. Yes, sir.

Q. And the only testimony—question withdrawn. Is this statement of Rogers' the only testimony you took in that matter at any part of your investigation? A. It is.

Q. Don't you remember, when you asked to have the accused brought to your office, that you had a request from the Sheriff that there was no Coroner's warrant at the jail and you should get one there? A. I don't remember that, no.

Q. Do you recall the time that you—question withdrawn. Did you get some information which you put into your finding in this case from sources other than the testimony which appears here? (Tr. p. 504)

Mr. ULLMAN. Objected to, if your honor please. What has that got to do with this issue?

Mr. ROBINSON. Preliminary question.

Mr. ULLMAN. Have the question read?

The COURT. Read it, Mr. Whay.

(Question read.)

Mr. ULLMAN. Object to that, if your honor please. The mere fact that it is preliminary does not make it admissible. It is not relevant to anything here.

The COURT. What does make it relevant?

Mr. ROBINSON. Shall I disclose my purpose, on cross-examination?

Mr. ULLMAN. I don't think—where it doesn't appear to be relevant I think counsel is under a duty to disclose.

Mr. ROBINSON. I withdrew the question, Mr. Ullman.

Q. You knew that this man at that time had a request made, didn't you, Mr. Corrigan, of counsel to visit him at the jail before you had him brought down? A. No, I don't know that, Mr. Robinson.

Q. Didn't you know, or weren't you informed by the jail, that Mr. Corse had been there and had requested an opportunity to see this man on the very day you had him brought up before this investigation? A. No, sir, I don't recall any such thing.

Q. You had certain information, apparently, from the nature of your questions and statement to this accused, when you saw him, concerning what he had said the night before. A. Is that a statement or a question, Mr. Robinson? (Tr. p. 505)

Q. I am asking you, isn't that so?

Mr. ULLMAN. You were not asking him that.

Q. Let me ask you. Isn't it so that you had been pretty well informed as to what had transpired in reference to Rogers before you had him brought down? A. Well, yes, sir, in a general way, I knew that he had confessed this crime and knew pretty much the details of his confession.

Q. And who told you that? A. Oh, Captain Wilson, I think it was.

Q. And when did he tell you that? A. Saturday, sometime.

Q. Was it after one o'clock in the morning on—wasn't it after one o'clock on Sunday morning, the 31st? A. My best recollection is that it was sometime Saturday afternoon. I could have been. I make no memoranda of these things.

Q. Have you followed the testimony here that there was no statement, incriminatory statement, given by Rogers, until, well, late in the evening of the day he was here in the State's Attorney office? A. I have not been in this court room but about five minutes in total, during the progress of this case.

Q. It is rather unusual for you to have hearings in Coroner's cases on Sunday, isn't it? A. Not at all, no.

Q. You didn't use your usual stenographer on this case? A. That's right. (Tr. p. 506)

Q. And—you say that you—this man was given the instruction that you have read. Did you give him any other instruction in any more simple language than the one you read off your notes here? A. No.

Mr. ULLMAN. Object to that, if your honor please. I think that is simple enough. Object to the designation.

Mr. ROBINSON. I mean simple language, understandable language.

The COURT. Well, this is cross-examination. I will allow it.

The WITNESS. No, sir, I didn't warn him otherwise than as appears in the record.

Q. And that is more or less a stock warning that you give in every case, isn't it? A. Oh, I should say so.

Q. Now, you were talking, apparently, to a man who didn't know the difference between a coroner and somebody who told whether a person was dead or alive, weren't you? A. I didn't say he didn't know the difference, Mr. Robinson.

Q. Well, didn't he answer your question immediately before you gave him that statement, as to whether he knew what a coroner was, his answer was, "He tells whether a person is dead or not?" A. I believe that the average layman would—

Q. Will you please answer that? You are talking to a person who had made that inquiry, weren't you? A. Yes, sir.

Q. I suppose you didn't believe it. That is your position? A. Well, you may suppose, Mr. Robinson.

Q. Well, did you believe it? A. Well, I didn't believe his knowledge was limited—

The COURT. Believe what, Mr. Robinson? (Tr. p. 507)

Q. Believe that he was talking to a person which had that particular idea about what a coroner was. Did you believe the statement that he made as to what his idea of a coroner was?

Mr. ULLMAN. Well, I object to this, if your honor please. It appears that the Coroner disabused him of that notion.

Mr. ROBINSON. I object to that language, "disabused."

The COURT. Go ahead, Mr. Robinson.

The WITNESS. My answer is that because he said "He tells whether a man or person is dead or not" that doesn't limit his knowledge or his idea of what a coroner is. He hit the high spots, so to speak. He didn't make a long speech informing me of all the duties of the Coroner.

Q. Well, he didn't even inform you correctly on that, that that is not your function, to determine if a person is dead or not. That is the Medical Examiner's function, isn't it? A. I should say it is mine.

Q. All right. Well, after you got that answer, did you explain to him at any time what you mean by "untimely death?" A. No, I didn't.

Q. Did you explain to him what you meant by the use of the word "inquest?" A. No, sir.

Q. Now, you made a statement to him that you thought he was acquainted with the law in a general way. Did you have (508) any basis for the assertion? A. Simply because I knew that his brother was a policeman and that he was a man of average intelligence and that he would be acquainted with that in a general way.

Q. You didn't make any effort to explain to him that in your particular tribunal that he was entitled to be accompanied by counsel, did you? As provided in the statute? A. I didn't tell him that it was statutory, but I did tell him that he was entitled to be represented by counsel.

Q. Right then and there in your—and be accompanied by counsel right then and there in that inquest? A. Well, I didn't say "right here now, in this inquest," but I told him that he was entitled to be represented by counsel before he testified. That is the effect of it.

Q. All you said to him was this, "I think you are acquainted in a general way and also—it is also so that you are entitled to be represented by counsel if you wish to." A. That's right.

Q. But you didn't explain to him that he had a present right, given to him by stattute, to have a lawyer with him then and there, did you? A. Well, if that is not the fair intendment of that statement, then I guess perhaps I—

Q. You didn't tell him anything other than what is here, did you? A. No, sir, I did not.

Q. It didn't occur to you at that time to explain to the effect that he had a right, for him to ask to have his counsel, whoever he was, there beside him to advise him; if that is what you intended to convey to him, you didn't go any further than this, did you? A. I thought that that was clear enough and I didn't go any further. (Tr. p. 509)

Q. You didn't call up any lawyer. You didn't even call the Public Defender, did you? A. Why should I? Of course, I didn't.

Q. I asked you whether you did or not. A. No, I didn't.

Q. You didn't want him to be represented by counsel before you got this statement out of him, did you?

Mr. Ullman. I object to that.

The Court. I will overrule the objection. The question may be answered.

The WITNESS. That doesn't follow.

Q. Well, was it so or not? A. It was not so, that I didn't want the public defender or other counsel there. I warned him his rights, and that is as far as I am required to go.

Q. And no further? A. No further.

Q. And did you explain to him what you meant when you said "If you talk to me you do it on a voluntary basis"; did you explain to him what you meant by the use of the word "voluntary?" A. Why, I think that needed no explanation.

Q. Perhaps, but did you? A. I did not, sir, no.

Q. Did you explain to him what you meant by the use of the word "immunity" when you said to him "I cannot promise you any reward or immunity?" A. I think the very next clause, "immunity from punishment."

Q. "Immunity from punishment." You said that? A. Yes.

Q. Did you explain to him what you meant by immunity from punishment? A. No, sir. (Tr. p. 510)

Q. And then you went on to tell him this, you couldn't make any of these promises by virtue of or for the reason of your saying anything you wish to or testifying as you choose to. You didn't intend, in that, any further direction than he was—he had no obligation to speak at all, did you? A. No, sir.

Q. Then you asked him, "Do I make myself quite clear now" and the accused answered "I understand." A. Yes, sir.

Q. And with that you immediately started out, "How old are you" and so on and so forth? A. Yes, sir.

Q. Now, Mr. Corrigan, you have not the slightest doubt, have you, that if you explained to this accused so that he understood it, that he had no obligation to make any statement to you, and that he had a right then and there under a statue to be represented by counsel, that he would have asked you for a lawyer? A. I don't agree to that at all, sir. He was perfectly well apprised of his rights, and it is my opinion that, no matter what I said to him by way of warning, that he still would have chosen to testify voluntarily.

Q. You thought that because you were informed that he had given some sort of a statement the day before, is that correct? A. Partially, yes, sir.

Mr. ROBINSON. I think that is all.

The WITNESS. Also from his attitude.

Mr. ROBINSON. Just a minute. (Tr. p. 511)

Q. Was it—I want to ask you this, wasn't it—did you leave instructions at the jail, along with your warrant, that he was not to see counsel until that permission was given by you? A. I left instructions that he wasn't to see anybody; that he was to be held incommunicado until I lifted that order.

Q. Now, have you any authority for such an order in this or any other case, Mr. Corrigan? A. Yes, sir.

Q. And what is it? A. The statute says that I may order witnesses to be kept separate until after they thereafter testify.

Q. And is that the only authority you can call attention to? A. That is enough, I think.

Q. And you construe that and put it in practice in all of those cases, don't you? A. That is right, sir.

Q. That he was not to see counsel until you said it was all right for him to see counsel? A. Not to see anybody.

Q. Yes, but that included counsel, didn't it? A. Yes, sir, it did.

Q. As a matter of fact, the practice in your office, so far as it can be enforced, is that whenever a person is arrested on your warrant, they cannot have access to the advice or presence or visit of an attorney. Isn't that so? A. That is so, in the first instance.

Q. And it is only after you think that it is an appropriate time, or after you had your interrogation, where you have informed him, these accused, that they have a right to counsel, that you lift that ban and let a lawyer see them? Isn't that the way the thing is run in this county? A. May I have the question read, please? (Tr. p. 512)

The COURT. Read it, Mr. Whay.

(Question read.)

The WITNESS. Yes, I lift the ban at the appropriate time, in my judgment.

Q. You allow the State's Attorney to interrogate an accused whenever he wants to, don't you? A. The State's Attorney, to my knowledge, has never requested that he examine an accused.

Q. Well now, Mr. Corrigan, you are an appointee suggested by the State's Attorney, aren't you? A. I am appointed by the judges of the Superior Court upon nomination of the State's Attorney.

Q. Yes, sir, and also isn't it so that this man that you impose upon the conduct of an accused person, which you call "incommunicado," because there isn't any English word, I suppose, that describes it—

Mr. ULLMAN. Humph.

Q. Does not prevent the State's Attorney's office and his detectives, generally, talking with the accused?

Mr. ULLMAN. Well, I object to that. This is irrelevant to anything at issue, because nothing like that—

Mr. ROBINSON. Right at this point I am specifically—

The COURT. I will sustain the objection.

Mr. ULLMAN. Nothing like that was shown.

Mr. ROBINSON. Have an exception.

Q. Didn't you allow this accused, after you had issued your warrant, to be visited by detectives and have his hands photographed? (Tr. p. 513)

Mr. ULLMAN. I object to that, if your honor please. That is after this statement was given.

The COURT. I will overrule the objection and allow the question to be answered.

Mr. ULLMAN. I don't know. It might not have been after, I'm not sure.

The WITNESS. I honestly don't remember just what time anybody from the police department saw him, after I saw him or before I saw him.

Q. Well, as a matter of fact, they didn't ask you that. They have blanket authority to go any time they want, don't they, the police? A. No, they don't.

Q. Don't you know that photographs were taken of parts of this man's body while your warrant was holding him, as you call it, "incommunicado?"

Mr. ULLMAN. I object to that, if your honor please. There is no evidence that that is so.

Mr. ROBINSON. I am asking him whether it is so.

The COURT. Asking him whether that is so. I will allow it.

Mr. ULLMAN. All right.

The COURT. Overrule the objection.

The WITNESS. I don't know, sir.

Q. Did you authorize, in this particular case, the State's Attorney's office, or the State's Attorney's office and his assistants, or anybody else in charge, to refuse counsel access to on your behalf, this accused, at any time? (Tr. p. 514)

Mr. ULLMAN. I object to this unless it is a time prior to the taking of this testimony.

Mr. ROBINSON. I will claim it was a time prior to the taking of this testimony by several hours, and we were trying to get a writ out.

(Question read.)

Q. So that, if such a refusal eminated from the State's Attorney's office, that is something that you had not authorized or empowered somebody to make on your behalf? A. I don't know anything about the State's Attorney's office issuing any such ban at all, and it was not to me, with prior consultation with me. I never knew that any such thing ever transpired.

Q. And you were not consulted about it, if any such request was made following the taking of the statement of this accused? A. That's right.

Q. So that it is fair to say, so far as you know, if such refusal was made, it was or somebody else's authority, without any knowledge on your part at all? A. Yes, sir, that is right.

Q. Well, let me ask you this. Is it your construction of the events that you have detailed that, sometimes in the morning of the 31st, you issued what we call—what is known as a Coroner's Warrant? A. Yes, sir.

Q. And the issuing of that simply means that you get somebody to type up the blank and you sign it, don't you? A. In this case I did that myself. (Tr. p. 515)

Q. I thought it looked like very clever typing. I am sure it is quite so. May I see the exhibit for identification? Now, are these warrants sometimes mailed to the jail? A. No, sir.

Q. And you are familiar with the statute under which those warrants are issued, I assume? A. Yes, sir.

Q. And you know the form of this warrant pretty well? A. Yes, sir.

Q. And the warrant, in this case, commanded the sheriff, after he received the person, to keep him in confinement at the jail? A. Yes, sir.

Q. It does not contain, as some warrants do, that I have seen issuing from your office, a designation of some other place of confinement, does it? A. No, sir.

Q. And you made no determination of no other appropriate place of confinement in this case than the New Haven County Jail, did you? A. That is right, sir.

Q. And it is your impression, at least, that in no perhaps specific—when this warrant was lodged at the jail that after its lodgment there, that this man be held under this warrant without bail? A. Yes, sir, that is right.

Q. By virtue of what authority do you order people that are under such a warrant of confinement to be taken to any place other than the jail?

Mr. ULLMAN. I object to that, if your honor please. Unless it relates to being taken before the Coroner. That is the only thing we are concerned about.

Mr. ROBINSON. Well, I will correct the question so that I will include in the question that statement. (Tr. p. 516)

Mr. ULLMAN. Very well.

Q. By what authority do you order people held at the jail under your warrant to be taken to your office or any other place you want them taken? A. The statute specifically gives me that authority.

Mr. ULLMAN. Object to the last part of the question. What was the answer?

Mr. ROBINSON. The statute specifically gives me that authority.

The WITNESS. The statute says "Or other proper place."

Q. But it is—is that the authority under which you act? A. Yes, sir.

Q. And I just asked you whether you made any finding about any other proper place, in this case, as you have to under that statute? A. No, I made no such designation.

Q. And all you did was to call up the jail and say, "Sheriff, bring him down to the office" or words to that effect, isn't that so? A. That's right.

Q. And that procedure was not taken by virtue of the statute or any other authority that you claim would authorize it? A. No, sir.

Q. Now, is this the warrant that you issued. I think you have been shown Defendant's Exhibit 5 for identification? A. Yes, sir; yes, I have.

Q. That you issued on that day? A. Yes, sir.

Q. And there was no other paper that you issued concerning the custody or the arrest of this accused, or in this case, generally except that one? A. I think that is right. (Tr. p. 517)

Q. Were your statements in your finding in this case based upon evidence, sworn evidence that you had taken?

Mr. ULLMAN. I object to this, if the Court please. No part of the issue that is presented before us.

The COURT. Sustain the objection.

Mr. ROBINSON. I think that is all.

Redirect Examination by Mr. Ullman.

Q. Your authority to order a man held incommunicado for a reasonable time is subject to review on habeas corpus, is it not, before the court?

Mr. ROBINSON. I object to that. That calls for a question of law which I think certainly is not—

Mr. ULLMAN. I think, as long as the jury is absent, and in view of the questions of counsel, I certainly think that is a proper question.

Mr. ROBINSON. Whatever his notion of it is make no difference.

The COURT. It may even enlighten me. I will allow it. Overrule the objection.

Mr. ROBINSON. Have an exception?

The COURT. Exception may be noted.

The WITNESS. Yes, sir.

Q. Have your orders to hold persons incommunicado for reasonable periods, been upheld on previous occasions after applications for a writ of habeas corpus? (Tr. p. 518)

Mr. ROBINSON. Object to that. Opens up a lot of collateral issues. All the cases I can ask about under the circumstances.

The COURT. I suppose, Mr. Robinson, justification for the question, is this. You questioned the propriety of the procedure that he followed and this is merely, I think, to make that, on questions of a similar nature to recite as facts something that happened which gives him the right to feel that he is doing what is proper.

Q. And then, did you say, "Now, if you do talk to me you will do so on a completely voluntary basis, just because you choose to do it?" A. I—

Q. Did you tell him that, sir? A. I did, sir.

Q. Then did you go on to say, "Whatever you do say may be held against you?" A. Yes, sir.

Q. "And you may be charged with the commission of some crime," did you say that? A. Yes, sir.

Q. And was it then that you told him "If you are so charged" you could not promise any reward or immunity from punishment? A. Yes, sir.

Q. Is that correct? A. Yes, sir, it is.

Q. And did you then, at the conclusion of that, say to him, "Do I make myself quite clear now?" A. I did, sir.

Q. And did he say "I understand?" A. Yes, sir.

Mr. ULLMAN. No further questions.

The COURT. I think I will take a recess at this point.

(Tr. p. 522)

(The following proceedings were continued in the absence of the jury at 11:57 A. M.)

Recross-examination (Continued) by Mr. Robinson.

Q. Mr. Corrigan, you recall something about the time when this statutory change was made in reference to the presence of counsel at your hearings? A. Yes, sir.

Q. Do you recall that even before that statute was on the books there were habeas corpus writs issued by the Court and responded to by somebody in reference to cases that you were holding under this incommunicado order? A. There had been a few, a very few.

Q. Isn't it so that whenever they got to court it had pretty generally been suggested by the presiding judge in these informal talks that, "Mr. Corrigan, it might be just as well to make some settlement on this rather than have a ruling on the propriety of

the procedure?" A. That was the procedure usually—always followed, I thing.

Q. You remember a case where specifically it was suggested unless you wanted to have a ruling on this in the coroner's office, that this particular order, in the particular case, should be immediately modified? A. I don't know about "immediately modified." My best recollection is that the Court would ask, "Well, now, how much more time do you think you will need?" And we discussed it back and forth and, generally speaking, it seems to me that the court invariably said, "That's reasonable; it would take me at least that long to decide it, so the thing is academic anyway," and, "Is that all right?" And counsel would usually acquiesce. That has been the history of all of them. (Tr. p. 523)

Q. With the man in the court house not being interrogated by you?

Mr. Ullman. I don't know what that question is.

A. What do you mean by that?

Q. I mean, specifically, do you remember the case of Walter Law, where a writ of habeas corpus brought Mr. Law to the court house in a room upstairs before the Superior Court? A. Oh, I don't—I really can't remember specifically. I don't have a clear recollection of that.

Q. Don't you recall in that case, if I can refresh your memory, who ever the presiding judge was, and my memory is it was probably Justice O'Sullivan, it was suggested to the coroner that without a decision on this it would be just as expedient to have the ban immediately lifted so that counsel could confer with Walter Law in the court house then and there? A. It could have been. I honestly have no recollection as to that.

Q. And that, of course, was some time before 1945 when this statutory change was made? A. Yes, sir, I think it was.

Q. Were you familiar with the procedures or the reasons behind this statutory change in the legislature when it was being discussed?

Mr. ULLMAN. Object to this.
The COURT. Sustained.
Mr. ROBINSON. May I have an exception. (Tr. p. 524)
I think that's all.
Mr. ULLMAN. No further questions. I offer the statement.
Mr. CORSE. Sheriff Redding, will you take the stand, please?
The COURT. That's all.
Mr. ULLMAN. No further questions. (Tr. p. 525)

APPENDIX C

Appendix of State of Connecticut before the Supreme Court of Errors of Connecticut

Raymond J. Eagan.

Direct Examination (continued) by Mr. Ullman.

Q. I think you had stated, Chief Eagan, that you arrived here at the State's Attorney's Office some time shortly after eight o'clock and questioned the accused? A. That's right.

Q. And the accused at that time, I think you said, was seated in a chair in one of the rooms in the State's Attorney's office? A. That's right.

Q. Will you tell us in what condition he was seated there? A. Rogers was seated in a chair there with handcuffs, as I said before—one cuff was free and the other was on a wrist. That is my best recollection of it.

Q. I see. In other words, the cuffs were attached to one wrist? A. That's right.

Q. And the other wrist was free? A. That's right, sir.

Q. Did he move his arms around? A. He played with the loose cuff, just around the arms of the chair.

Q. Aside from that did he move his hands around for other purposes? A. He smoked cigarettes, mine and his, and one of those present ran out and he had coffee and he had more cigarettes brought to him.

Q. Before having coffee did you have some conversation with him regarding something to eat? A. I did.

Q. What was that? A. I don't remember who was going out, but somebody volunteered to go out and get something to eat and Rogers was asked what he wanted, if he wanted anything else besides coffee, and he said no, all he wanted was coffee. Others had sandwiches and he had coffee.

Q. Sandwiches and coffee were brought in? A. That's right.

Q. Did the accused eat anything, he just drank coffee? A. That's right.

Q. And for how long a period did you question him before any transcription was made? A. About two hours and ten minutes.

Q. Were you doing the questioning? A. I was.

Q. And was it repeated—or continuous, rather, or were there pauses and interruptions? A. There were breaks.

Q. There were. And during all that time the accused was seated? A. That's right, sir.

Q. In asking him questions did you make any threats against him? A. I did not.

Q. No threats of inflicting harm or damage or anything else to him? A. No, sir.

Q. Did you make any promises of immunity or of reducing the penalty or anything else? A. No, sir. I told Rogers that nothing that he talked to me about, if he did talk, could be of any benefit to him, it would be up to the Court or jury, whatever he made any statement to, that I as a police officer had no power or right to offer him anything.

Q. Did you use any coercion upon him at all? A. No, sir.

Q. Or any force? A. No, sir.

Q. How did he answer the questions as you put them to him? A. His responses were direct, right as soon as the question was asked.

Q. Did you have to press him for answers in any instance? A. No, sir.

Q. And at some time was there some discussion about his wife? A. There was.

Q. Will you tell us what that was. A. I talking to Rogers I told him I felt I would have to bring his wife down and talk to her. He said, "Why do you have to do that?" I said, "Because you have been under arrest and now that this thing has happeend, you still had the gun, it may be that your wife in a visit to the

jail, you informed her of other trouble you might be in." He said, "Well, she wouldn't know anything about anything I do." I said, "Well, I don't know that. It may be possible a man in trouble would tell his wife what trouble he was in." That's all I said to him.

Q. And at sometime or other did he make some statement regarding this affair of November 21? A. He did.

Q. What did he say? A. Well, the first thing he said was—

Mr. CORSE. Object to that, if the Court please, for the record.

The COURT. Overruled.

Mr. CORSE. May I have an exception?

The COURT. Exception may be noted.

APPENDIX D

Defendant's Exhibit 4
5/13/54
RRL

Office of
STATE'S ATTORNEY
New Haven County
New Haven, Conn.

Abraham Ullman,
State's Attorney,

Arthur T. Gorman,
Assistant State's Attorney.

January 30th, 1954.

Mr. Daniel Patterson,
New Haven County Jail.

This will authorize you to allow Detectives to take Harold Rogers to the State Attorney's Office for questioning.

ABRAHAM S. ULLMAN,
per
EDMUND S. FLANAGAN,
County Detective.

STATE OF CONNECTICUT
NEW HAVEN COUNTY
SUPERIOR COURT

I, Edward Horwitz, clerk of the Superior Court within and for New Haven County, in the State of Connecticut, and keeper of the records and seal thereof, hereby certify that the above and

foregoing is a true copy of Exhibit 4 in the records of this Court in the case of #9995 *State of Connecticut* vs. *Harold D. Rogers.*

In testimony whereof I hereunto set my hand and affix the seal of said court, at New Haven, in said county, this 20th day of March, A. D. 1956.

EDWARD HORWITZ, Clerk.

[SEAL]

APPENDIX E

General Statutes of Connecticut, Revision 1949

Sec. 485. Power of Coroner in Securing Evidence.

For the purpose of securing evidence, the coroner may enter any and all places in his county; shall have power to issue a warrant for a jury inquest, to compel the attendance and testimony of witnesses by subpoena and capias issued by him or other proper authority and to punish for contempt to the same extent as justices of the peace may in criminal cases; he may order and cause witnesses to be kept separate so that they cannot communicate with one another until they shall have testified; he may order or cause any person or persons whom he has good reason to suspect of having criminally caused the death in regard to which he is holding an inquest to be arrested and committed to the county jail or other proper place; he shall have power to take bail in such cases or to commit without bail when in his opinion the person arrested is guilty of a capital offense and when the proof against such person is evident or the presumption great. When bail shall be taken, it shall be to the state and shall be conditioned for the apeparance of the person so arrested before the superior court for such county at its next criminal session. Any person so arrested and admitted to bail may be rearrested and committed by the coroner without bail when, in the opinion of the coroner, the proof shall be evident or the presumption great that such person is guilty of a capital offense. In no case shall any person be kept under arrest by an order from a coroner for a longer time than twenty-four hours after the finding of a verdict by the jury or after the finding by the coroner in such inquest; and, at any time before such finding, whenever the grounds on which a person is so arrested shall cease to exist in the opinion of the coroner, he shall order the release of such arrested person.

Sec. 8727. Binding Over on Probable Cause.

When any complaint for any criminal matter cognizable by the superior court shall be legally brought before a trial justice, he may inquire into the the facts relating thereto; and, if he shall find that probable ground exists for its support, he may, if the offense be bailable, order the accused to enter into a recognizance with surety to the state, conditioned that he shall appear before the criminal session of the superior court next to be held in the county where such bond is taken, to answer to the complaint and abide the order or judgment of said court thereon, and, on his failure to enter into such recognizance, or, if the offense complained of be not bailable, such trial justice shall order him to be committed to the jail in said county until the next criminal session of said court or until he shall be discharged by due course of law; but all cases of binding over by trial justice, or by any borough, police or town court, in the county of New Haven, within the judicial district of Waterbury, shall be to the criminal session of the superior court next to be held at Waterbury; and all cases of binding over in New Haven county outside of said judicial district shall be to the criminal session of the superior court next to be held at New Haven.

In the

Supreme Court of the United States

OCTOBER TERM, 1955

No. 881

HAROLD D. ROGERS
Petitioner

vs.

STATE OF CONNECTICUT
Respondent

STATEMENT OF THE CASE

In amplification of Petitioner's Statement certain uncontradicted facts, altogether independent of the confessions, are herein set forth.

On the very evening that Mrs. Kennedy was shot and killed during the robbery at her store, petitioner's nephew George Evans discovered that his revolver and cartridges were missing from a bedroom of his home. Petitioner had visited the Evans home that afternoon, and, for this reason particularly, Evans sought him out the following day and accused him of taking the gun. However, petitioner steadfastly denied the theft whereupon Evans and petitioner went to Police Headquarters and reported that the gun had been stolen by a person unknown (Record pp. 9-10).

On January 9, 1954, a robbery, theft and breaking and entering were perpetrated at the Travelers Hotel in New Haven for which

crimes the police arrested petitioner. In his possession at the time of his arrest was the stolen Evans revolver. Upon being questioned by the police, petitioner at first maintained that he had won the gun in a "crap game" that afternoon. However, in further questioning the following day, he admitted having stolen the gun from his nephew's home on the afternoon of the Kennedy murder. In the meantime in an effort to conceal the identity of the gun, petitioner had filed its serial numbers (Record p. 10).

The murder remained unsolved until January 30, 1954, when ballistics tests by the State Police established that the revolver taken from petitioner had fired the bullets which killed Mrs. Kennedy (Record p. 10).

REASONS AGAINST REVIEW BY THIS COURT

1. The issues raised here were fairly and fully tried and reviewed in the Court below.

2. The undisputed facts of this case do not indicate the use of incorrect constitutional standards of judgment as heretofore set forth by this Court.

3. No right guaranteed by the Due Process Clause of the Fourteenth Amendment was violated in the procurement and use of the confessions.

4. The use of the confessions obtained under the circumstances of this case is by no means repugnant to "that fundamental fairness essential to the very concept of justice." *Lisenba* vs. *Calif.*, 314 U. S. 219, 236 (1941).

5. No substantial constitutional question is presented here.

ARGUMENT

I

TWO COURTS AND A JURY DETERMINED THAT THE CONFESSIONS WERE MADE FREELY AND VOLUNTARILY

On motion of petitioner, the Trial Court in the absence of the Jury heard evidence at great length as to the circumstances surrounding these confessions. Thereafter in ruling the confessions freely and voluntarily made, the Court made two Findings of facts (Record pp. 38-42; 42-45). In the course of the trial the Jury passed upon these same claims and circumstances and by its verdict found that the confessions were not adversely affected thereby. The issue was again presented to the Supreme Court of Errors and there for the third time was determined adversely to petitioner's contentions. A criminal prosecution thus approved by the state should not be set aside as violative of due process without clear proof that such drastic action is required to protect Federal constitutional rights. *Gallegos* vs. *Nebraska*, 342 U. S. 55, 60 (1951).

We submit that there is here no such clear proof. On the contrary, it is amply evident that there were present no such circumstances as have led this Court to hold in certain cases that convictions upon the basis of forced confessions were in violation of the Due Process Clause of the Fourteenth Amendment. The evidence here is not such as to impel this Court to "set aside the findings of two courts and a jury and adjudge that the admission of these confessions was so fundamentally unfair, so contrary to the concept of ordered liberty, as to amount to deprivation of due process." *Lisenba* vs. *Calif.*, supra at p. 238.

II

THE CONFESSIONS WERE NOT PROCURED THROUGH COERCION

Petitioner does not so much as suggest that the action of any officer before or during the making of either confession was accompained by force or by the threat of force. As to his confession to the Coroner (Exhibit WW) petitioner makes no claim of coercion, either physical or psychological. His sole contention on this point relates to his confession to the police (Exhibit VV) which he asserts resulted from psychological pressure by prolonged interrogation while handcuffed and by a threat to take petitioner's wife in custody.

His claim of protracted questioning while handcuffed finds no support in the evidence and is directly contrary to the finding of facts made by the Court (Record pp. 40-45). The Court found that although petitioner was at the State's Attorney's office from shortly after noon until about midnight, the questioning was never continuous or extended; there were delays, recesses and interruptions; the treatment accorded petitioner was considerate; he was at all times seated with his handcuffs released; at intervals in the afternoon and evening food, coffee and cigarettes were given to him; petitioner is highly intelligent; he had experienced previous arrests and interrogations by the police and was not adversely affected by the treatment accorded him on this occasion. When petitioner indicated his readiness to make a statement, an official Court Reporter was summoned and a stenographic record of the confession was made. Following this confession, the petitioner was not again questioned until late the following afternoon, some seventeen hours later, when he appeared before the Coroner at a formal inquest. On this occasion the entire interrogation was concluded within one and one-half hours (Record pp. 43-44). Thus, it is seen that petitioner's entire argument on

this point is based upon an assumption of facts diametrically opposed to those found by the Court. His argument accordingly must fall, for it is only on uncontroverted facts that the issue of Federal due process is to be considered. *Gallegos* vs. *Nebraska*, supra at p. 62.

Similarly, petitioner's claim that a "threat to take his wife into custody" coerced his first confession is also a departure from the facts found by the Court. The announced purpose of the officers was merely to question his wife as to any knowledge she might have bearing upon the murder (Record p. 40). This can hardly be classed as a threat or as such a threat as would coerce a confession or render it involuntary. Just as the hope of benefit influencing a confession so as to render it involuntary must relate to the particular crime confessed, so also a threat must have a direct and immediate relation in order to invalidate the confession. Cf. *Henson* vs. *State*, 159 Tex. Cr. 647, 652; 266 S. W. 2d, 864 (1953). *State* vs. *Beard*, 16 N. J. 50, 56; 106 A 2d 265 (1954).

The Court properly found that this pretense of placing a telephone call for the wife had such collateral and remote connection as not to taint the confession with a probability of untruth (Record p. 41) Cf. *State* vs. *Malm*, 142 Conn. 112, 121. And in any event Connecticut courts hold that a trick which has no tendency to produce a confession except one in accordance with truth is always admissible. *State* vs. *Palko*, 121 Conn. 669, 680.

Alone or together, neither illegal detention nor deceit by the police would suffice to vitiate a confession as unconstitutionally obtained. *U. S. ex rel. Caminito* vs. *Murphy*, 222 F. 2d 698, 700 (1955).

We submit that the interrogation of petitioner under these circumstances was at all times within reasonable limits. It was wholly free from those objectionable features usually referred to as third degree methods. Throughout there was a complete

absence of conduct calculated to overpower petitioner's resistance. Accordingly, the Court below quite properly found that there was neither physical nor psychological coercion. *Stein* vs. *N. Y.*, 346 U. S. 156, 184 (1951). Where there is a dispute as to whether the facts which are charged to be coercive actually occurred, or where different inferences may be drawn from the admitted facts, the appellant tribunal is not to interfere even though it might on an original appraisal have come to a contrary conclusion.

Lyons vs. *Okla.*, 322 U. S. 596, 602 (1944).
Lisenba vs. *Calif.*, supra at p. 238.

Although petitioner makes no claim that any of these elements of prolonged interrogation, of being handcuffed, or of threats to summon his wife, actually attended his confession to the Coroner, he takes a position that these occurrences of the preceding day carried over and infected his second confession also. However, since the Court found that these elements were not present on the day of the first confession, they obviously could have had no effect upon the second confession. And in any event a confession otherwise voluntary is not affected by the fact that a previous one was obtained by improper influences, if it is shown that those influences were not operating when the later confession was made. *State* vs. *Willis*, 71 Conn. 293, 313. *Lyons* vs. *Oklahoma*, supra at p. 603. The burden of showing essential unfairness in a state court is upon him who claims such injustice and seeks to have the result set aside, and this burden must be sustained not as a matter of speculation but as demonstrable reality. *Adams* vs. *U. S. ex rel. McCann*, 317 U. S. 269, 281 (1942). Petitioner here has failed utterly to sustain this burden.

III

THERE WAS NO DENIAL OF COUNSEL TO PETITIONER

The short answer to this claim is that there was no refusal of counsel to petitioner. The Trial Court specifically found that petitioner at no time requested counsel before or during his confession to the police (Record p. 41). Moreover on the day following this first confession, petitioner made no request that his attorney be called to the jail, Opinion below, 143 Conn. 167, 174. (Petitioner's Appendix A, p. 21.) That he had no desire for counsel is further demonstrated in his confession to the Coroner. There, at the very outset of the interrogation, he expressly elected to proceed without counsel notwithstanding that he was specifically instructed as to his right to counsel as well as his right to refuse to testify altogether (Record p. 44).

Even if these were not the facts, the denial of counsel during interrogation by police or coroner would not constitute a violation of due process. *Stroble* vs. *California,* 343 U. S. 181, 196 (1952). See also *State* vs. *Cross, 72* Conn. *722, 728.* This Court has repeatedly held that the Fourteenth Amendment does not bind state courts to exclude a confession because, without coercion, it was obtained while prisoner was uncounselled and illegally detained. *Stein* vs. *N. Y.,* supra at p. 188. *Lisenba* vs. *California,* supra at p. 240.

The test of admissibility is whether the confession was voluntary and not whether the accused was well advised. *State* vs. *Palko,* supra at p. 680. Obviously, a confession is not rendered involuntary merely by reason of the absence of counsel. Particularly where a defendant has had considerable prior experience wtih criminal investigations, as is true of this petitioner, the denial of counsel and confession while held incommunicado does

not work fundamental unfairness. *Boyden* vs. *Webb*, 208 F 2d 201, 204 (1953).

The right to counsel which petitioner herein asserts so vehemently is one which arises only upon the arraignment of prisoner. *Hawk* vs. *Olson*, 326 U. S. 271, 278 (1945). Lack of counsel prior to trial does not constitute a denial of justice. *Gallegos* vs. *Nebraska*, supra at p. 65. No claim is made here that there was any interference with petitioner's right to counsel at all times subsequent to the Coroner's hearing on January 31st so that ample opportunity for consultation and preparation was available to petitioner as specified in *Powell* vs. *Alabama*, 287 U. S. 45, 59 (1932).

IV

AS TO ILLEGAL DETENTION

It should be noted that at the time of making both his confessions, petitioner was being held on lawful process relating to other charges. Upon receiving the ballistics report, the investigators concededly might have questioned him at the Jail. Instead, they procured his delivery to the State's Attorney's office on written request to the Jailer rather than by court order. As to his confession to the Coroner the following day, petitioner's presence could have been procured by subpoena. *State* vs. *Buteau*, 136 Conn. 113, 121. Instead, his appearance was produced by a telephone call from the Coroner to the Jailer.

Since petitioner was wholly unaware of the method used to present him on either of these occasions, the irregularity obviously had no impact on him and his confessions cannot be deemed to be tainted thereby (Record pp. 42, 44). Yet petitioner contends that because his removal to the State's Attorney's office was without specific court authorization and because the Coroner dispensed with a formal subpoena, his confessions thereby become

involuntary as a matter of law quite apart from whether they were involuntary as a matter of fact.

Petitioner concedes that the McNabb rule has no application in State courts; but even in Federal jurisdictions where it does apply, the McNabb doctrine does not preclude police examination of a prisoner lawfully arrested and held on other charges.

Palakiko vs. *Harper, Warden*, 209 F 2d 75, 94 (C. A. 9, 1953) cert. den. 347 U. S. 956, 979 (1953).

U. S. vs. *Carignan*, 342 U. S. 36, 45 (1951).

In both the Palakiko and Carignan cases the prisoners were removed from jail, without court order, for questioning which resulted in confessions. This Court there pointed out that constitutional requirements do not forbid such private examination of persons in lawful custody. *U. S.* vs. *Carignan*, supra at 39.

Particularly with a prisoner experienced in the ways of crime and its detection, as was this petitioner, it is difficult to see how interrogation at the jail or his removal by court order or subpoena would have made any difference. The places in which the confessions were given or the means by which he was brought to those places had nothing whatever to do with the giving of the confessions. *Palakiko* vs. *Harper, Warden*, supra at 94.

Under the law of Connecticut, a voluntary confession is not to be excluded because of any illegality in the accused's situation at the time of making it, and a confession if otherwise admissible, cannot be rejected for the reason that the accused was in custody on invalid process or without any process or legal right.

State vs. *Zukauskas*, 132 Conn. 450, 458.

State vs. *Buteau*, 136 Conn. 113, 123.

State vs. *Guastamacchio*, 137 Conn. 179, 183.

This Court, too, recognizes that evidence obtained by illegal means may not void state convictions and the Fourteenth Amend-

ment does not prohibit a state from such detention and inter rogation of a suspect as under the circumstances appears reason able and not coercive. *Stein* vs. *N. Y.*, supra at 192. This i not one of the cases where the "sphere of superintendence (of thi Court) should . . . extend to state police activities." *U. S* vs. *Murphy*, supra at p. 706.

CONCLUSION

This petition for certiorari does not present sufficient substance or merit to warrant review by this Court. There was no denial of due process of law in the procuring or use of petitioner's confessions.

It is therefore respectfully submitted that this case is not a proper one for review by certiorari in this Court, and that the petition for a writ of certiorari ought to be denied.

Dated May 10, 1956.

ABRAHAM S. ULLMAN,
ARTHUR T. GORMAN,
Counsel for Respondent.

FILED
MAY 23 195
HAROLD B. WILLEY, C

In the

Supreme Court of the United States

OCTOBER TERM, 1955

No. 881

HAROLD D. ROGERS,
Petitioner
vs.
STATE OF CONNECTICUT,
Respondent

Supplemental Brief in Support of the Petition for a Writ of Certiorari to the Supreme Court of Errors of the State of Connecticut

THOMAS R. ROBINSON,
Public Defender for
New Haven County
185 Church Street,
New Haven, Conn.

LAWRENCE M. DOOLEY,
Special Assistant to
The Public Defender
158 Montowese Street,
Branford, Conn.
Counsel for Petitioner

I. PETITIONER'S REQUEST FOR COUNSEL AT THE STATE'S ATTORNEY'S OFFICE

Respondent relies on the trial court finding that "The accused did not at any time on the day of the questioning request the presence or assistance of an attorney" (Record p. 41) to refute petitioner's assertion that he asked for counsel. As pointed out in the Petition (at p. 4), Rogers testified that he asked for counsel about an hour after his arrival at about 1 P. M. at the State's Attorney's office. This testimony was uncontradicted. Rogers testified that two detectives were present when he requested counsel. (Petitioner's Appendix B, p. 41.) Neither of these detectives were called by the State to testify.

The trial court finding was obviously based on Assistant Chief Eagan's testimony, the only other testimony on this point at the trial. However, Eagan by his own testimony (1) did not arrive at the State's Attorney's office until 8 P. M. (Petitioner's Appendix B, p. 30) and (2) did not testify about the period before he arrived. (Petitioner's Appendix B, p. 37.)

Therefore, Rogers' testimony as to the happenings from about 1 P. M. to 8 P. M. was clearly uncontradicted in regard to his request for counsel. Petitioner does not rely on any testimony which was contradicted by Eagan as to the events after 8 P. M., but solely on the uncontradicted testimony of Rogers which the State did not elect to challenge with the available detectives.

On review, the majority opinion of the Supreme Court of Errors did not accept or reject the trial court finding on the request for counsel, but considered, arguendo, that Rogers was denied counsel at the State's Attorney's office (Petitioner's Appendix A, p. 21), and the dissent stated conclusively, "Upon arriving there, he was told for the first time that he was to be questioned about the death of Mrs. Kennedy. He immediately asked to see his lawyer. Not only was this request refused but he was thereafter subjected to a prolonged interrogation from

approximately 1 P. M. until the early morning hours of the following day." (Petitioner's Appendix A, p. 26.)

In connection with the right to counsel argument, respondent infers from his use of *Hawk* v. *Olson*, 326 U. S. 271 (1945) (Respondent's Reply Brief p. 8), that the events of January 30 and 31, 1954, were prior to Rogers' arraignment. It is necessary, therefore, to emphasize again that Rogers had been arraigned on January 13, 1954, in the City Court of New Haven on the charge of attempted robbery while armed, breaking and entering, theft, and carrying a revolver in a motor vehicle (Record p. 39).

II. AS TO THE HANDCUFFS

Respondent states "he (Rogers) was at all times seated with his handcuffs released" (Respondent's Reply Brief, p. 4), apparently relying on the trial court finding at page 40 of the Record. Here again, however, Rogers' testimony (Petition p. 4) is uncontradicted as to events before 8 P. M. As to events after 8 P. M. the trial court's finding and Assistant Chief Eagan's testimony indicate that at least one wrist was in a handcuff at all times (Record p. 40; Petitioner's Appendix B, p. 36; Appendix C, p. 67). Therefore, there is no basis for respondent's statement that "he was at all times seated with his handcuffs released."

III. AS TO THE THREATS TO TAKE PETITIONER'S WIFE INTO CUSTODY

In attacking the significance of the admittedly faked-phone calls (Petitioner's Apperndix B, p. 34) in regard to bringing in Rogers sick wife and family, respondent states that "the announced purpose of the officers was merely to question the wife as to any knowledge she might have bearing upon the murder," and that "The Court properly found that this pretense—of placing a telephone call for the wife had such collateral and remote connection as not to taint the confession with probability of untruth." (Respondent's Reply Brief, p. 5.)

Respondent makes no explanation of how the officer's "announced purpose" to bring in the wife was to be effectuated when the police officer actually talked to no one. The respondent also ignores its police officer's testimony that the purpose of the faked call was to impress Rogers with the advisability of giving a statement which the officer was requesting (Petitioner's Appendix, p. 34).

More important, however, respondent ignores the uncontradicted testimony of Eagan and Rogers on this point. This testimony clearly demonstrates the relation between the faked calls and the confession:

> "Q. (cross-examination of Eagan): And he continued to deny any involvement in the case until after the fake telephone call with regard to his wife. Is that correct? A. Well, I say there was an hour's difference between the time I made the call and the time he started to talk.
>
> "Q. That I understand, but that was after he— A. Oh, that is after, yes, after the call.
>
> "Q. And after you had told him about these ballistic reports he still maintained his denial until after the call to Mrs. Rogers? Right? A. Yes." (Petitioner's Appendix B, p. 38.)

> "Q. (direct examination of Rogers): And what happened after Chief Eagan arrived? A. He said he was going to check my wife up and have her come down and have the two children and he picked up the telephone. I thought he was telephoning. He was talking to Headquarters. Said 'Get a squad car ready to pick up Mrs. Rogers and have the matron pick up the two children and take them some place and keep them over night. Well, bring her down there for questioning, keep her down there over night if necessary.' . . . . (Disputed testimony here omitted.)

"Q. Did he say anything about holding it up for an hour? A. Yes, he said he would give me an hour, indirectly. He didn't say exactly that, indirectly, he didn't exactly say. He told them over the phone to hold that car for an hour and he could call up and tell them directly when to send for her, gave me the impression he gave me an hour to confess.

"Q. Is that the reason you gave him this statement? A. That's right." (Petitioner's Appendix B, pp. 42, 43.)

"Q. (cross-examination of Rogers) : Did you use the whole hour to consider whether you were to confess? A. That's right.

"Q. You used the whole hour? A. That's right.

"Q. And at the end of that hour, after that hour's consideration, he went to the telephone, picked up the phone, and was it then that you made the confession? A. That's right.

"Q. And that was because of what he said to you about your wife? A. That's right.

"Q. Coming down? A. That's right." (Petitoner's Appendix B. p. 43.)

The opinion of the court below gives no credence to the "announced purpose" argument respondent raises by labeling the call a "pretended" one (Petitioner's Appendix A, p. 21). The dissenting opinion stated, "Only after the police had *threatened* to take his sick wife into custody and to turn his and his wife's foster children over to the juvenile authorities, and had pretended to make two telephone calls to put that *threat* into effect, did the defendant reverse his previous persistent denials and involve himself in the killing of Mrs. Kennedy." (Emphasis added.) (Petitioner's Appendix A, p. 26.)

CONCLUSION

The facts set forth here and in petitioner's statement of the case (Petition, p. 3) are based entirely on uncontroverted or conceded facts and are, therefore, undisputed facts for purposes of review by this Court. On the basis of these facts, it is respectfully submitted that the Petition for a Writ of Certiorari be granted so that petitioner is not deprived of his life without due process of law.

THOMAS R. ROBINSON,
Public Defender for New Haven County,

LAWRENCE M. DOOLEY,
Special Assistant to the Public Defender,

Counsel for Petitioner.